MODERN GOVERNMENTS

THEORY AND PRACTICE

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SPECIMEN

CENTRAL BOOK DEPOT
ALLAHABAD

REPRINTED 1969
Central Book Depot, Allahabad

Second Revised Edition

Printed in India at the
Indian Universities Press and
Published by Central Book Depot,
Allahabad.

PREFACE

In this work the study of forms of government has not been made country by country. We have chosen to present a functional analysis of government with a view to evaluating some general principles, applicable to political behaviour. Concentration of power in the hands of governments is a characteristic of the era we are living in. The study of government behaviour will, therefore, enable us to interpret better the fateful events currently taking place. A comparison of our own political institutions with those of other countries may lead to a better understanding of our own and may even suggest improvements we may choose to make in our political practice. Needless to say that political institutions cannot be exported or imported wholesale from one environment to another. We cannot afford to ape a particular model. We can learn, however, from our own mistakes inasmuch as from the mistakes of others and we may also emulate better examples. It all depnds on the economic, social and political objectives a community has set before itself. These objectives will determine the content of political institutions even if forms are common. Different national ideologies affect the procedures used in politics and administration, and influence political behaviour. Which institutions are better than others is a question which can be answered in the context of the way of life you accept. The pith and substance of the theory of government is national ideology.

National ideology, again, cannot be arbitrarily chosen. It evolves; it is the outcome of historical pressures—social and economic and others. Countries which felt similar pressures have more in common with each other than with others. These pressures determine the national objectives which governments are charged with. Since 1945, more than fifty states have achieved their freedom and they had to choose the type of government that could deliver the goods. The experience of one country—say

India—may be helpful to others facing simliar problems. In India also we have had serious problems some of which are awaiting solution. The problems of relationship between the Centre and the Units, and the question of relations between the State and Political Parties, if not between the President and the Prime Minister, are among the more important. In this work we have attempted to study the theory and functions of government with special reference to the problems of India.

This work owes a great deal more than I can acknowledge in words to discussions with friends and students. In particular I wish to thank my colleagues Messers Mohan Lal, K. C. Joshi, H. M. Jain, Rama Kant and K. K. Misra for illuminating suggestions. I am grateful to my teacher Prof. A. B. Lal, Head of the Department of Political Science for going through the concluding part of the work, and for granting me facilities in the Library when he was the Hony. Librarian. I must also thank Mr. Justice S. S. Dhawan, Judge at the Hon'ble High Court of Allahabad and Dr. P. K. Tripathi, Professor and Dean, Faculty of Law at the University of Allahabad, with whom I freely discussed problems of law and justice. Needless to say that none of them is to be blamed for any errors or omissions which may have crept into this work. My obligation to numerous authors of specialized studies on which I have relied heavily, will be found in the select bibliography at the end of the volume. I must also thank Mr. P. L. Gaur, who, for months, sat with me patiently taking down shorthand notes and preparing the typescript.

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August, 10, 1963.

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I

THE STATE

Political Science, by common consent, is the science of State. About the nature of the State, its ends and purposes, however, there is considerable difference of opinion. If Hegel regards it as the realization of the moral idea, Bentham viewed it as purely utilitarian and Locke as contractual. Some writers define the State as essentially a class structure; others regard it as the one organization that transcends class and stands for the whole community. Some interpret it as a power system, others as a welfare system. Some view it entirely as a legal construction, either in the old Austinian sense which made it a relationship of governors and governed, or, in the language of modern jurisprudence, as a community 'organized for action under legal rules'. Some identify it with the nation, others regard nationality as incidental or unnecessary or even as a falsifying element which perverts the nature and functions of the state. Some regard it as no more than a mutual insurance society, others as the very texture of all our life. To some it is a necessary evil, and to a very few an evil that is or will be some day unnecessary, while to others it is 'the world the spirit has made for itself'. Some class the state as one in the order of 'Corporations', and others think of it as distinguishable from society itself. One thinker calls it a divine institution, another interprets it in terms of a contract. According to one the state is a "necessary evil", to another "a social whole" or an organism. The sociologist, viewing the state primarily as a social phenomenon, usually defines it differently from the jurist, who regards it first of all as a juridical establishment. Similarly writers on international law in their definitions emphasize certain elements which the political scientist ignores or minimizes and philosophical writers, in their turn, think as they do in abstract terms, formulate their definitions differently.

HISTORICAL DEVELOPMENT

Historically we start from a point where the State has come to exist to a point where the State continues to evolve. That is to

say, once constituted in its earliest forms, the state evolved in those periods of history near enough to have left us ascertainable records.

The earliest states we know were built up along the great rivers of the middle latitudes—Nile, Euphrates, Tigris, Indus, Ganges, Yellow River and Yang Tse. These fertile valleys were naturally the earliest sources of surplus wealth, and this was accumulated in cities that became centres of commercial exchange and of administration. These states tended to expand upwards, as it were, away from the mouths of rivers into the interior until mountain or desert was reached. They were essentially power and property states, built on wealth and military force; they attracted the jealousy of nomadic tribes beyond or of each other, and had little stability, the conqueror being conquered in his turn. Sometimes the break-up came from inside by the revolt of some subordinate official who either made his province into an independent state or actually overthrew and replaced his sovereign lord. Expansion by annexation, then disruption and re-constitution, either from within or by conquest from the outside, were the normal processes that marked those early empires.

But if they were politically unstable they were socially stable because they were based on that most stabilising force, agriculture. The peasant does not move, does not welcome change, is indifferent to political vicissitudes as long as he is guaranteed a minimum of security in the cultivation of the soil.[1] The preservation of the essential social and economic frame-work is marked by the development of those institutions that separate the real state from the still primitive tribe; law replaces tradition and custom; organised armies are an important element, and warfare goes with elaborate rules of international intercourse.

But it must not be assumed that those states were primitive and barbarous. For instance we know about the scientific knowledge of Babylonians and Egyptians, their division of time and their mathematical calculations. The Code of Hammurabi regulated with detailed common sense almost every imaginable aspect of life, and reveals a highly organized society. The Summerians are said to have established rotation of office, annual appointments and election by secret ballot. The oriental type of empire was expansive sometimes and at some places tyrannical and at others, humane. It was, of course, autocratic. But its autocracy was limited in practice by custom, tradition and religion. They also made important contributions. They kept large areas of the world in comparative order and quiet. Famine, excessive taxation, the misbehaviour of particular officials might cause local revolts but the long centuries of its predominance show that under the circumstances of those days it was on the whole adequate to

[1] R. M. MacIver, *Community* (1917), Ch. I.

its function. The Chinese built up an admirable Chinese Civil Service based on competitive examinations. The institution of census which plays such a dominant role in modern political life goes back to the 1st century A. D. in China.[1] Though the imperial government of China was autocratic in form and often in practice, Chinese society has ever been essentially democratic in spirit.[2]

As for India, in ancient times India witnessed the rise and decline of states of every conceivable form and magnitude, from tiny village commonwealths to mighty empires comparable in area, population and power with any the world has known.[3] The Maurya Empire of Chandra Gupta and Asoka in the fourth and third centuries B. C., was considerably more extensive than the British Empire in India, and was in its day one of the great states of the world. It carried on diplomatic relations with Egypt and the states of Greece and was respected by them as an Empire of world stature.[4] The empire of the Hindu Tartars in the north and northwest of India in the 1st and 2nd centuries of the Christian era was also a state of world rank, maintaining diplomatic relations with the rulers of China and Rome.[5] The southern empire of the Andhras, B.C. 200 to A.D. 250 enjoyed equal relations with the leading states of Europe and Asia.[6] And so one might continue the enumeration, naming one by one the great kingdoms and empires which have made the history of India rich and varied in political experience.

But the oriental empires were all characterized by a sense of inertia. For more developed forms of State we have to go to the West. On the Aegean and Eastern Mediterranean Seas, communities developed on somewhat different and varied lines, all

1 H. A. Giles, *The Civilization of China*, pp. 9-12 and 111-112.

2 Compare Maxey's *Political Philosophies* (Revised Ed. 1948), p. 21. "The autocracy of the emperor was more that of a pater familias than of a divinely sanctioned despot. True, the emperor ruled as the son of Heaven but be it remembered, as the son of a Chinese and not of a Christian heaven. Heaven to the Chinese mind was not the mystic abode of an invisible and unapproachable God, but a system of natural laws and relationships expressing the Perfect Mind and Perfect Will. The State was an integral and indispensable part of this system, and at the apex of the state stood the emperor...In the vast and sublimated family of which the emperor was deemed to be the paternal head, the voice and will of the people could be felt and might at times outweigh the voice and will of the emperor."

3 B. K. Sarkar, *Hindu Pol. Philosophy* in *Pol. Sc. Quarterly* Vol. XXXIII (1918) pp 482-500. "The Hindu Pericleses, Caesars, Justinians, Charlemagnes and Frederick Barbarossas could easily challenge comparison with their Western peers on their own terms."

4 Maxey, *op. cit.*, p. 23.

5 *Ibid*

6 *Ibid.*, p. 23.

however, regarding the sea as a highway instead of a barrier. We know very little of the people who established the maritime states of Troy, Crete, Mycenae, a great deal of more of the Phoenicians of the Eastern Mediterranean coast, and still more of the tiny city states of the Greek mainland and islands.[1] All these states had some common characteristics. They all arose out of trade, either as carriers for the product of inland states, or as pirates and dealers in loot, often as both. They were small and therefore were easy to defend; they expanded not by conquest of large areas but by the establishment of trading outposts or colonies. They had mobility and adaptability and their cities were the meeting place of ideas.

The Greek city states are the instance of the most fully developed States.[2] They offer us a number of small units independent of any external control and having evolved within their limits systems of government based not on the personal authority of one leader, but on the common wills and personal participation of their individual members, who are no longer subjects but citizens. It was probably the very smallness of these units—smallness in respect of area and of population that enabled them to become self-governing. The contacts between government and governed

1 Cary and Haarhoff, *Life and Thought in the Greek and Roman World*, pp. 15-50.

2 According to MacIver the Greek City States were not true States. He says that the Greek political thinker had no word corresponding to the modern "state". "It is only the city, the polis, of which he could speak and we are very apt to misinterpret his meaning when we translate it as state. It is the city community, not our 'state', to which he attributed all these comprehensive functions and powers." *The Modern State* (1926) pp. 338-362. The same view is held by Finer who says, "To the Greeks the term State was unknown : our scholars invented it for them. Nor has the fully developed Periclean Polis. anything we may equate with modern government : the emphasis as classical students have taught us (rightly ?) was upon the enjoyment of rights and Community, not upon supremacy and obedience. Nor did Polis even denote any fellowship but one whose members were few enough to dwell together in a small area—this, indeed, being properly recognised as a condition of fellowship. Aristotle said : 'Ten men are too few for a city; a hundred thousand are too many'. When, at the Renaissance, the world became conscious of the legacy of Greece, States had grown so vast in area, and their political institutions were so different from those of classical times, that men could only find the word 'city' for Polis 'city' that is, a town with communal life, but not a country." *The Theory and P actice of Modern Government* (2 vols 1932) pp. 8-9. Thus according to Finer "The State made its first appearance in the 16th century, approximately at the time when Machiavelli first employed the term 'state' in The Prince." He says that the state "is hardly, even in its most venerable pillars, older than Luther and Shakespeare, and some of its essential engines were developed only yesterday. The State will not mean to us what it actually is unless we recognise its extreme youth. In the perspective of world history it is a pretentious juvenile, lately come of age, insisting upon its maturity among jealous elders." *Ibid.*, p. 5.

were too close, the problems too immediate for the people involved not to have tried to manage their own affairs instead of leaving them to some more or less responsible chieftain. The development of this spirit is not easy to trace in history. But we know that the Greeks soon developed a hearty contempt for absolute hereditary rule, or 'tyranny' as they called it.

What, then, was the Greek idea of citizenship ? The Greeks conferred citizenship only on the citizens—the aliens and the slaves were barred. Naturalization was unknown. But while citizenship was exclusive in numbers, the scope of its activities was all-inclusive because the citizens really ruled, elected all officials, carried on the work of legislation and of justice, and were really collectively responsible for the city's policy. Thus ancient Greece gave us legislative assemblies, principles of direct democracy and ideas of citizenship.

But democracy in ancient Greece was not constant. In fact state underwent numerous changes there. From Primitive Polity or Monarchy they passed on to Oligarchy of which the most prominent aspect is the reduction of the power of the king, and ultimately the substitution for him of an annual magistracy. There came the Tyrannies—"irregular, unconstitutional reversion to monarchy". But Tyranny was a prevalent type at certain periods, though not a necessary stage through which Greek states passed. After these tyrannies disappeared, the brilliant period of Greek history began which was generally characterized by a drift towards democracy. We can trace the progress in the democratic direction from stage to stage at Athens, where a stable democratic regime was finally established at the end of the 5th century, which remained substantially unaltered upto the time of the subjugation under Macedonia. Of course, even in the Democratic age, at places Oligarchies and at places Tyrannies continued. The Macedonian predominance and empire closes the period of effective independence of the city states and then we see the last noteworthy product of the fertile inventiveness of the Greek mind in the department of political construction—the Federal system. After this Greece was formally absorbed in the Roman Rule.

Rome was originally just one of the small city States which had been born in Italy, in much the same way and for the same geographical reasons as in Greece. But the Roman States remained isolated until Rome began to expand, first in Italy, and then outside. The original Rome was a "Republic" having got rid of its early rulers, or kings just as the Greek had expelled their tyrants. Here also appeared a citizen class charged with the management of the city's affairs. But Rome never became a democracy on the Athenian model because one of its assembly, the Senate, making itself partly hereditary and partly self-recruiting, managed to keep the reality of power even largely manipulating the

nominally popular election of Consuls and other officials. It would, therefore, be more correct to call Rome an aristocratic oligarchy than a democracy, until the time when the Senate virtually abdicated before the strong man of the day, at first a successful soldier—Marius, Sulla, and finally Caesar whose nephew Augustus established a practically hereditary autocracy.

The contribution to politics of Rome as a city state and a republic is, therefore, negligible except perhaps to show how democratic forms can be completely neutralised by an aristocratic or autocratic reality. Rome may be said to have taught later dictators that the way to establish tyranny is not by outright destruction of free institutions thus creating conflict, opposition and resistance but by gradually and secretly emptying them of all effective power while respecting their outward forms, a lesson well learnt by the two Napoleons, by Mussolini and by Hitler.

But more important was the contribution of Rome as the capital of an empire. There was first of all the enlargement of the known political world by the inclusion of France, Spain, England, Western Germany and North Africa. In the second place come some of the methods by which that empire was controlled, namely, the use of loyal local chieftains acting as Roman agents, the respect for local customs and rules where they did not conflict with any vital Roman principle, and for all essentials the establishment of one single system of Roman Law. This varied according to status from slave to free non-citizen and upto full citizens but seems at least to have been rigidly applied and gave to the concept of law a majesty hitherto unknown. Further the granting of full Roman citizenship to any loyal members of the empire, whatever his national origins gave to all citizens thus honoured a direct interest in the maintenance of the Roman system.

But there were numerous evils in the Roman system, slavery, religious persecution, irresponsible despotism, unenterprising [illegible] too high [illegible] -leading to [illegible]

With the decline of Rome disappeared the last attempt at an empire comprising virtually the entire Western world. In the Eastern part of the Roman Empire no problem arose. The Roman Empire had been effectively cut into two over a century before, and the heir of the Caesars who ruled in Byzantium continued the imperial autocratic tradition; his successors, first the Arabs then the Turks, introduced no new principle of government. Not until the end of the First World War did most of the former Eastern empire know anything but an irresponsible tyranny, which sapped their populations of any independence of spirit or initiative and bequeathed to them an inheritance of misgovernment, inefficiency and corruption. So much about the Eastern half of the Roman Empire.

The Western half of the empire had very different developments. The collapse of Roman rule brought about a disintegration so complete that the innumerable fragments into which the Western World broke up were scarcely states. In such conditions land was the only reality—the landowner being the supreme authority over his slaves and tenants. Within his lands he could keep order and maintain a minimum of economic activity and coherent existence. Each district had its lord, who ruled over it as a miniature king, delegating his authority to his chief tenants in return for certain personal services, mainly military and financial. It is this association of political power with land control that is the essential principle of what is commonly called the Feudal system. Thus it was simply government by a territorial aristocracy filling the vacancy created by the collapse of any central power.

But gradually powerful lords subdued less powerful ones, and small kingdoms emerged, becoming gradually larger and stronger by successful conquest or lucky marriages and by the *consolidation of an authority that was generally welcomed by the* masses (who wanted law and order) if not by the more important lords whose powers were gradually limited by the new monarchs. Thus emerged France, England, a number of little units in Germany and Central Europe forming a loose federation under the leadership of an elected head called the Holy Roman Emperor and these together with numerous other small states, many of them city states, made a new political map of the Western world.[1] Thus at this time we see a number of territorial lords limited by two authorities—one, the Holy Roman Emperors and the other the Holy Roman Church.

Christianity had after various shifts and shocks, entered Europe in the Roman period. After the decline of the Roman Empire the major problem arose of the relation of the Church and

1 Lord Bryce thus discusses the essential principles of the Holy Roman Empire: "There was nevertheless, such a thing as medieval imperialism, a theory of the nature of the state and the best form of government....It is enough to say, that from three leading principles all its properties may be derived. The first and the least essential was the existence of the state as a monarchy. The second was the exact co-incidence of the state's limits and the perfect harmony of its workings with the limits and the workings of the Church. The third was its Universality. These three were vital. Form of Political organization, the presence or absence of constitutional checks, the degree of liberty enjoyed by the subject, the rights conceded to local authorities, all these were matters of secondary importance. But although there brooded over all the shadow of a despotism, it was a despotism not of the sword but of law; despotism not *chilling and blighting, but one which in Germany at least, looked with* favour on municipal freedom, and everywhere did its best for learning, for religion, for intelligence, a despotism not hereditary, but one which constantly maintained in theory the principle that he should rule who was found "

the State. The church was a universal institution and professed loyalties to God and Pope. Moreover it did not confine itself to the spiritual elevation of man. The church was, as a property owner, a participant in justice and administration. It claimed to control the clergy even in the most mundane matters. The State, therefore, resented this interference. Moreover, the State could not dismiss as purely 'spiritual' such practical matters as marriage and inheritance, or accept as 'crimes' whatever acts the Church chose to condemn as such. Hence the conflict between the Church and the Empire. The entire history of the medieval ages is dominated by this conflict Out of this conflict the new monarchic State arose in the 14th and 15th centuries. The story of this rise of the monarchic state now demands attention. But before we do it, a word about the contribution of the Middle Ages.

Though the Middle Ages, as Lord Bryce puts it, were essentially unpolitical, because there was no such polity then as we have now, yet the middle ages made an important contribution. We find, for instance, that the middle ages developed the idea of representation. The medieval king could not seize the property of his subjects as if it were his own. It had to be obtained by proper forms, either by the legal process of confiscation for certain offences, or by some process of voluntary yielding for common purposes. As the business of government grew more complex, the need for greater revenue arose, and this made kings increasingly anxious to enlarge their dominions and thereby their wealth in money and men. But increased revenue could only be obtained by increased taxation, and this was checked by man's natural reluctance to part with money. Further, the more the king claimed, the more anxious were subjects to see that this was spent on objects of which they approved. Thus out of the king's need for money, of the subjects disinclination to part with it, and of their intention to see how, once given, it was spent, came the great contribution of the Middle Ages to political practice, Representative Assemblies. It was probably the Church where took place the election of representatives by the local houses of certain monastic orders to a central council.

We have seen that a conflict became inevitable between the Universal Church and the Universal Emperor during the middle ages. Out of this conflict [illegible] Thus the rise of the new monarchy [illegible] he political change that chara[illegible] Ages. Each such territory had contained several distinct, mutually jealous classes—nobles, burgesses, artisans, clergy, peasantry—and for centuries, French nobility and German nobility had had more in common with each other than either had with the townsmen of their own country. So, of the other classes. Social unity and sympathies had not been national, German or English : they had followed the lines of class cleavage across Europe. The monarchies were to change all this. They were to weld these classes,

within each of their respective territories into one nation with the common thread of patriotism. Probably no king put this end before him clearly as his task, but the result followed naturally from the thing the king did strive for—namely, to consolidate the numerous petty feudal States within his realm into one state with a uniform administration centring in his will. In Machiavelli's and Bodin's political writings we first find the voice of the monarchic State.

Most of these monarchs still paid homage to the Pope and the Emperor. But the Reformation movement in Europe liberated them from the Pope and the Thirty Years War (1618-1648) emancipated them from the Emperor. Thus by 1648 the new political entity—the Nation-State, became sovereign. In the realm of Political theory, Hobbes gave us a philosophy of full-fledged sovereign state. From 15th century to the 20th is a period of the establishment of the nation-state. England and Hungary were among the first of modern European nations to attain political self-consciousness. France followed in the end of the 15th century, the Spanish kingdoms in early 16th; and the United Provinces of the Netherlands became independent in the 16th; and Austria too emerged at the same time. Portugal became independent in 1640 and Prussia became a "Power" in 1701. Russia, as a united nation and a European power also dates from the early years of the 18th century. Across the Atlantic the 13 colonies of America became independent of England.

In the last quarter of the 18th century two Revolutions swept off Europe—The French Revolution and the Industrial Revolution. The French Revolution released the forces of liberty, nationality, and equality. Thus from 1815 to 1870 there were nationalist revolts in Europe, and Italy and Germany were unified. The Industrial Revolution raised the problems of social and economic relationship and released the forces of Democracy. Monarchs came to be limited. In Asia Japan came to its own. After the first world war, as a result of Wilson's doctrine of self-determination, a number of nation-States came into existence in Europe: Poland, Czechoslovakia, Yugoslavia etc. The second world war (1939-45) in its wake led to nationalist revolts in Asia and the Middle East, and India, Pakistan, Burma, Indonesia etc. became full States. In recent times, the nation-state has come to be modified by regional and international groups and organizations which tend to modify the theory of State sovereignty.

ELEMENTS OF STATE

We may now turn to the elements of the State. Sidgwick talking about the State says that State implies[1] "that the aggregate of human beings. . . . is united—if in no other way—by the fact of acknowledging permanent obedience to a common govern-

[1] Sidgwick in Gettell's *Readings in Political Science*, pp. 19-20.

ment, and having, through the permanence of the relations between government and governed, a corporate life distinguishable from the lives of its members; (2) that the government exercises control over a certain portion of the earth's surface, and (3) that the society has a not inconsiderable number of members, though the number cannot be definitely state". Thus according to Sidgwick there are three elements of the State: government, territory and population.

According to Willoughby "the essential elements of a State are three in number, They are : (a) a community of people socially united, (b) a political machinery, termed a government, and administered by a corps of officials termed a magistracy; (c) a body of rules or maxims, written or unwritten determining the scope of this public authority and the manner of its exercise.[1] Thus according to Willoughby the essential elements are population, government and constitution. Bluntschli enumerates four essentials of State—territory, population, unity and organization.[2] It is now universally agreed that state consists of Population, Territory, Government and Sovereigny.

Population is obviously an indispensable element of any human association. It provides the personal element. As Ward puts it "Civilization is something that is produced by some kind of agency, and we have seen that that agency is not to be found in the physical surroundings of man, which are passive and inert. And as the only elements in existence are men and things, the agents of civilization must be men. Civilization is the result of the activities of all men during all time, struggling against the environment and slowly conquering nature.[3] Thus the factor of population for any society is quite important.

But what men and in what manner man exercises this influence on the State ? Now, the quality of population is also an important consideration. The quality of population would seem to depend on four main factors : its (a) cultural level, (b) its physical environment and fitness (c) its integration and (d) its stability. Cultural level includes native intelligence, education, [illegible] liness to work. Therefore a people [illegible] trained, able to think independent[illegible] he state than one lacking all these, and they will be able to use those mental qualities for the better development of natural resources, for the overcoming of handicaps and exploitation of opportunities. A collectively lazy people will never succeed, nor will one incapable of combined effort and planning. The German capacity to organize and his technical skill was always a terror to France. Similarly the technical skill of the Jews has been a source of irritation to the Arabs in Palestine.

1 Willoughby, The Nature of the State, p. 21.
2 Bluntschli quoted in eacock, *Elements of Pol. Science*, p. 12-13.
3 Ward in Gettel, *op. cit.*, p. 49.

As for physique, a good population will be healthy. Disease diminishes intelligence, capacity for work, energy and vitality, and it makes for poor production, laziness, lethargy. And then there is a certain sense of security and a sense of contentment which are important factors.

But when we consider the factor of population we must not ignore the role of great men. Of course, it is foolish to worship them as heroes; but it is equally unwise to ignore their true significance in the history of the world. There is a lot of truth in the economic interpretation of history but even a communitst will not deny the personal influence of Lenin and Stalin in moulding historical forces. In our own country Gandhiji permeated the whole Indian politics. Indeed it is correct to say that a leader is both the creature and creator of historic forces. As Ward puts it, "If by any force of circumstances the elite of any country were to be removed, that country would be left in a state of intellectual stagnation. Indeed, history has demonstrated this on more than one occasion. When Spain killed off and drove out its elite it fell into decadence and never has recovered its vigor. Italy suffered immensely from the same cause and is today far behind the leading nations of the world. And these are not the only instances. On the other hand, the brilliant role played by Switzerland in the history of science is chiefly due to the rich recruits which that country received from the persecutions carried on in other countries. No one who appreciates this vital point will make the absurd mistake of trying to interpret all history in exclusively economic terms. To do this is to empty out the human content of historical developments and to represent men as mere automatons responding blindly to stimuli from the world of economic experience".

The next problem in the context of population is the problem of number. In different times and climes, people have said different things on this issue. There are some who said that the number must be small; there are others who believe in large population theory; there are still others who strike a middle course. While Plato thought that the State should be limited to 5040 households and Aristotle held that a citizenry of 100,000 was excessive, today we contemplate a world State with a population of more than two billions. According to Aristotle there ought to be a limit, and he laid down the general principle that the number should be neither too small nor too large; it should, on the other hand, be large enough to be self-sufficing and small enough to be well-governed.[1]

According to Rousseau the ideal number is 10,000. He held that there should be suitable relation between the extent of territory and the number of people. He believed that the population should not be in excess of the number which the land was capable of supporting. Lord Acton believed that a state should contain a reasonable number of people because "in a small and

[1] 'Politics' Jowett's Trans, p. 267. Ch. VII.

homogeneous population there is hardly room for a natural classification of society, or for inner groups of interests that set bounds to sovereign power."[1] Fisher, on the other hand, believes that such small states as Judea, Athens, Florence and Geneva have made tremendous contributions to world civilization.[2] But today we have states containing a few thousands and states containing hundreds of millions. *Mauritius* is a case of the former, China and India of the latter. Duguit on the whole has taken a reasonable view. He says that the population must be sufficient *to make possible a differentiation between those who govern* and those who are governed. Today the dominant tendency is larger population and larger territory. Printing press, telephone, and radio, railway, automobile and airplane, and so many other modern agencies have removed the bars to communication, annihilated space, and altered our whole conception of size. These changes have led to the shrinkage and contraction of the globe. Thus Aristotle could never imagine a large country State with thousands of miles of railways, [illegible] water-ways. "*Aristotle thought in* [illegible] power of the herald's voice, [illegible] D. Roosevelt had fire side chats with the people of a continent, and King George V was heard throughout the British Empire, scattered over all the seven seas. No stentor could perform such magic. Aristotle thought that 100,000 citizens would be too many; but the population of the United States was over 100,000,000 in 1920. . . ."[3] Secondly this alteration of our conception of size is also due to improved political devices, such as representation and federalism. The representation system has vastly extended the scope of the State because millions of people can now elect their representatives to a Central Legislature of a single state. Similarly during the last one hundred and seventy years the federal system has proved its great value. It has reconciled local autonomy with national unity, diversity with uniformity; it has enabled local communities to retain much of their individual character, and yet co-operate for certain purposes in a single-State. Federalism meets the further problem of heterogeneity for it allows local peculiarities of culture to persist and common elements to continue.

In recent times the factor of population has led to density problems, problems of overpopulation, emigration and racial problems, colour-bar issue, the problem of increased food supplies and so on. There are states which have sharp disproportion between population and territory e.g. Canada is immense in territory, small in population. The ratio between size of territory and of population, or "Population Density" is expressed by figures indicating the average number of inhabitants per square

1 Lord Acton, *The History of Freedom and other Essays,* (1907) p. 295.

2 H. A. L. Fisher, *The Value of Small States,* p. 19.

3 Edward M. Sait, *Political Institutions : A Preface,* pp. 95-96.

mile.[1] The result is that those States which have smaller areas but larger population have some advantages and some disadvantages. Larger population is an asset for large-scale industrial production which requires an abundant supply of labour. Secondly man-power also means a big army. But on the other side disadvantages are many; such states have to face the problem of food supplies and standard of living. Complaints of overpopulation lead to four alternatives : (a) to put up with a very low standard of life, or (b) increase its own food supplies, or (c) again produce goods which it can sell abroad and so buy entire food and other necessities, or (d) diminish its population, either by birth restriction or by the emigration of its 'surplus' inhabitants.

The most important of these four alternatives is emigration to a student of politics. Now emigration can be of two kinds. Either one can export surplus population to other countries as Japan sent its surplus population to Australia and America, or one can export it to colonies and thus in the absence of colonies, demand colonies, as Germany, Italy and Japan demanded "living space." In any case an international conflict begins.

Again, a state with small population but with rich natural resources may invite emigrants as Ceylon and South Africa invited the Indians or as America invited the Negroes. These developments have created racial problems. The U. S. A. keeps the Negroes under serious disabilities[2] and in South Africa and the Government of Ceylon have passed various measures to disable the Indians.[3] In these racial problems also lie the seeds of international conflicts.

Closely connected with the racial problem is the problem of Minorities. This problem has a very important bearing on State. Wherever a State is made up of diverse populational elements, each largely concentrated in a particular part of the country, the demand for regional self-government gets connected

1 For instance we may quote the figures of 1950 :—

Australia	.	2.0	per square mile
Canada	...	3.0	"
U. S. A.	...	3.6	"
Siam	...	86	"
Indo-china	...	162	"
India	...	274	"
Russia	...	90	"
Britain	...	500	"
Japan	..	299	"
Java	...	886	"

Compare the *Statesman Year Book*, 1950

2 C. F. Strong, *Story of the American People*, pp. 265-266.

3 "Dr. Malan and the Commonwealth." *The Round Table* No. 163, June 1951.

with the claims of the various national minorites to cultural as well as political autonomy, if not to absolute independence or right of secession to a neighbour State. Regionalist claims of this sort existed in Yugoslavia, Roumania, Czechoslovakia, Poland, Denmark, Belgium and several other States. The dismemberment of the Turkish Empire is a history of minority movements claiming first a measure of autonomy and then full independence.[1] But where national or religious minorities exist, not in defined geographical areas, but scattered among the rest of the population, the demand for autonomy may take a different form. It is found in the claim for separate national or cultural electorates as in the case of the Moslems and Sikhs in India, and in the demand for cultural autonomy through the right to conduct separate schools and churches and to secure recognition of the right to use the minority language in the courts. In India, in recent years on religious basis the Muslim minority decided to form a separate state of Pakistan. But the minority disputes continued and even now are a source of irritation between India and Pakistan. Further, there is a tendency now to make provision for the minorities in the Constitution. In the 16th Part of the Constitution of India there are special provisions relating to the scheduled castes and the Anglo-Indian minorities.[2]

It was Rousseau who viewed the members of the State in a double capacity, that is, as "active citizens participating in the formulation of what he called the 'general will' and at the same time, as "subjects", bound by the laws of the State". Thus the population of the state must be envisaged from a double point of view; first, as citizens, that is, as members of the State and entitled to the privileges which flow therefrom; and, second, as the subjects of the power and action of the state, that is, as the persons to whom its commands and injunctions are addressed. But in a certain sense the possession of the quality of citizen is not essential to membership in the state, since as a matter of fact there are to be found in every state certain classes of persons who, while not citizens, are accorded the protection of the state and enjoy its benefits. The possession of citizenship, however, is the normal condition of full membership.

Territory. Territory is another essential element of the State. The earlier writers on political science, however, did not include territory as an essential element. Even today some writers hold the same view. Thus W. E. Hall believes that "there is no reason why even a wandering tribe or society should not feel itself bound as stringently as a settled community by definite rules of conduct toward other communities". But even Hall admits that territory is a practical necessity.[3] Similarly Duguit holds the view that

1 G. D H. and Margaret Cole, *A Guide To Modern Politics*, pp. 361-362.
2 Part XVI of the Constitution of India Arts, 330 to 342.
3 Hall, *International Lau* (3rd Ed.) p. 20.

territory is not an indispensable element.[1]

Woodrow Wilson admits that today the State does include territory. But he says that the original governments were knit together by bonds closer than those of geography, more real than the bonds of mere contiguity. They were held together, he says, by real or assumed kinship. People in the nomadic pastoral stage, before they had found themselves on the land as cultivators had some form of government. These, Wilson says, should be regarded as States.[2]

Similarly Sir John Seeley maintains that territoriality is not an essential attribute of the State. Political Science, he says, should not concern itself only with so-called civilized states. There are lower as well as higher organisms. Why should Aristotle almost exclude from investigation all states but that very peculiar kind of state which flourished in his own country? There is, Seeley insists, a common characteristic that marks primitive nomadic tribes as well as the most advanced people—the principle of government. Thus if a society is held together by the principle of government, it constitutes a State.[3]

But if there are writers who do not count territory as an essential element of the State, there are others who hold the opposite view. Kluber in 1817 was the first writer to define the state as a society of citizens having a determinate territory. According to Bluntschli if the state has personal basis in the people it has its physical basis in the territory. The people, he says, do not become a state until they have acquired a territory.[4] Jellinek holds that the co-existence of two or more states on the same territory would produce a continual state of war by reason of the conflicts of interests and of jurisdiction. Territory is, therefore, an indispensable element of the State.[5]

1 "Taking the word in the most general sense, we may say that there is a State whenever in a given society there exists a political differentiation however rudimentary or however developed it may be. The word State designates the rulers....or else the society itself in which the differentiation between rulers and ruled exists and in which, for that very reason, a public power exists. He adds "Territory is the material limit of the effective action of the rulers. It is that, all that, and only that. Territory is not an indispensable element of the State. . . ." *Ibid.* p. 46.

2 Wilson : *State.* Revised Edition, 1898, p. 8.

3 John Seeley : *Introduction to Pol. Science* (1896) pp. 31-37.

4 Bluntschli : *Theory of the State*, p. 231.

5 But to this rule Garner in his *Political Science and Government* pp. 78-79 gives four exceptions. The first is, Condominium or Co-imperium, where two or more states exercise over the same territory a common sovereignty or jurisdiction" *e.g.* The Anglo-Egyptian Condominium over the Sudan. In the second place, he says in the case of federal Unions, there is a co-existence on the same territory of the federation and the component member states"

The truth is that territory has come to be established as an integral part of the State now. The reasons are practical. The conduct of international relations would be seriously impeded without the requirement of a defined territory. It must be possible to identify the State so as to enforce international obligations. Moreover, the relationship of the people to the territory must give reasonable promise of permanence so that the State may give solid guarantees for the fulfilment of its obligations. Territory is also important from a legal point of view. The one element which distinguishes the State from all other groups is that the State possesses sovereignty while other associations do not. Now modern conception of sovereignty is territorial *i.e.*, the exercise of sovereignty is associated with territory and is confined to the territorial limits of the state exercising it.

The Romans made a distinction between imperium and dominium, *i.e.* between the Sovereignty over territory and ownership of the territory. Seneca always held that "to kings belongs power, to individuals property". But according to the feudal theory of the State, the lord or the king was both sovereign over and the owner of the territory under his control. This feudal theory was approved by Grotius, Bodin, Lebret, and Domat. Louis XIV identified himself with the State; he said "I am the State". This theory, however, became discredited in the hands of Locke and Rousseau. The former restricted the right of the government to tax property; and the latter enunciated the doctrine of popular sovereignty. The French Revolutionists, therefore, in recognition of the new conception changed the title of their kings from 'Roi de France' to 'Roi des Francais'. The latter title implied that the king exercised the power of government over the French people, and negatived the ideal implied in the former title that he had the right of ownership of the land and the people. Even in 1815 at the Congress of Vienna the other view prevailed but soon after it was completely repudiated. Today, the State has over the territory only the right of government, and not ownership. Of course, the state has the right to expropriate it for public use when needed by the State. In the Indian Constitution Part III, it is provided that the acquisition of property for public purposes *must be based on compensation.*[1]

"In the third place as a result of the principle of extra-territorial jurisdiction under which foreign diplomatic representatives remain subject to the law of their own state and under which in a few countries (China, for example) foreigners generally are permitted to be tried before the ministers, consuls, or courts of their own country, we have an example of two or more states exercising jurisdiction in the same territory." Lastly he mentions military occupation.

1 Part III, Art. 31 of the Constitution of India—Some German writers have discussed what has been called the theory of Territory as a subjective element of the State.

What should be the extent of territory? Today we are struck by the great contrast in the respective size of states as between tiny Monaco (370 acres) and huge U. S. S. R. (ten and a half million square miles *i.e.* over 2 million times larger). Thus no rule as to the minimum or maximum area of a State can be laid down. As we have seen, in ancient Greece there were small City States. Similarly, during the middle ages the area of States was usually small. Germany alone, as late as the 19th century, contained about 300 states. Of course, in eastern parts of the world we had big and small states.

In the realm of political theory, in ancient Greece both Plato and Aristotle favoured States of moderate size. Rousseau in the 18th century argued that general Will or a healthy polity is possible only in small territorial units. He also maintained that there is a necessary relation between the size of the state and the form of government best adapted to it. He said, for instance, that monarchy is suited to large states, aristocracy to States of moderate size and democracy to small states. Similarly, Montesquieu believed that the republican form is best suited to states of small area, the monarchical form to states of moderate size and the despotic form to those of vast extent. De Tocqueville also held that the republican system of government is unsuited to large states.[1] Likewise, John Stuart Mill said that vast areas cannot be governed from one centre.[2] But these views are no longer valid today. The most important characteristic of modern age is the shortening of distances and shrinkage of the globe. The scientific progress has led to this shrinkage. Large states have, therefore, become a fact. As Fisher says about America "The foundation of the U. S. A. proved that a great modern state could adopt the republican form."[3]

The question is sometimes asked, is space Power? Taken by itself, space is of little significance. Thousands of square miles of desert, or of wild mountain, or of snow and ice are no great asset except as a barrier against possible invader, while some small states have attained great prosperity and reached the highest levels of civilization. Nevertheless space is power in so far as it helps defence and in so far as small areas are more open to attack. Small states have suffered many more vicissitudes in history unless like Switzerland they are internationally guaranteed.

[1] Compare his '*Democracy in America*' translated by Reeves Vol. I, p. 170. "The history of the world offers no instance of a great nation retaining the form of a republican government for a long series of years. It may be advanced with confidence that the existence of a great republic will always be exposed to far greater dangers than that of a small one. All the passions which are most fatal to republican institutions spread with an increasing territory."

[2] *Representative Government*: Everyman's Library Series Chap. 17, p. 374-375.

[3] Fisher: *The Republican Tradition in Europe*, p. 67.

It was Aristotle who first emphasised the importance of location of territory. He says that a model state should have ample access to the sea, and should be a maritime state with a naval force commensurate with the scale of its enterprises. It should be located also where the climate is temperate and congenial to both physical and mental activity. Even today access to the sea is an asset, so has nearness to strategic points such as straits, isthmuses, islands on main ocean routes, important mountain passes. Similarly, the possibility of establishing good internal communications by road or river helps cohesion and good government.

What about the quality of territory ? The quality of territory implies the climate, the quality of the soil, the geological structure, the flora and fauna, the natural resources and the geographical location and their impact on the State. The geographical location we have already considered. These questions are primarily questions of geo-politics.[1]

We have referred to the views of Aristotle, Bodin, Montesque and others on some of these issues and the influence of climate on State. The naturalistic theory of these thinkers was pushed to the farthest limit by Mr. Buckle who denied all freedom to man, and made climate, food, soil, and the general aspects of nature the supreme and ultimate historical causes. Dr. J. W. Draper held the same views.[2] Taine laid great stress upon soil, sky, sea, climate and food as factors in the intellectual and literary history of England.[3] The configuration of earth will affect the questions of defence of a State. Conditions of heat and cold, the amount of rain and the recurrence of drought directly affect man, his health, strength and mental character. The character and length of the

1 This is "a new study to which the Germans gave the name Geo-politics", the politics of the soil, or how far do conditions of physical geography determine political life, and specially relations between states. In one sense the subject is as old as political science, and Aristotle had some wise things to say about it; in modern times Montesque laid the foundations of a more scientific approach. But contemporary geopolitics has at its disposal a much greater technical knowledge and a broader field of historical experience. (The real founder of the new science was Professor Mackinder of Oxford whose "Democratic Ideals and Reality" published before the First World War, forms the basis of all future study in that field. But the book was unnoticed at the time and was resurrected by Nazi geographers). 'Geopolitics' to quote its chief German exponent Hanshofer, 'demonstrates the dependence of all political developments on the permanent reality of the soil', it is the doctrine of the earth relations of political units of the relationship between space and politics. It proclaims the spatial requirements of every state, its necessary living room; it is, as another geo-politician calls it 'the geographical conscience of the State"—Soltau, *Introduction to Politics*, pp. 22-23.

2 Drapers : *History of the Intellectual Development of Europe*, Ch. 1.

3 Taine : "History of English Literature", Chs. 1 & 2. Also refer to George P. Marsh's "Man and Nature", Chs. 1 & 3.

seasonal alterations condition the size and quality of the harvest. Insufficiency of moisture and lack of sunshine are alike inimical to economic welfare. Fertility, if it is overabundant will [illegible] initiative. As [illegible] desire for [illegible] men work [illegible] advance. [illegible] and painf[illegible] the most favourable soil is one of moderate fertility.

The question of natural resources has today become more important. A country's capacity to grow enough food for its population by having enough cultivable land in proportion to the population is the most obvious. Dependence on the foreigners for food (as for instance India's dependence for food on other countries) creates very serious problems and in a way impairs a country's independence of action. Minerals are also important; the possession of coal made modern England; that of oil is revolutionising the Middle East, and the U. S. A. would not be where they are now without their mineral deposits.

But we must also remember that man's ingenuity and inventions can alter geographical advantages. [illegible] the electric power [illegible] French call 'white coal' and if oil has not superseded coal as completely as was once expected it has nevertheless greatly diminished its importance and made its possession less significant. And most important of all, man can always try and redress the inequalities of nature. Tunnels have pierced through mountains, irrigation and artificial fertilisers have revolutionised agriculture, exchange has generalised access to all the essentials of life. And one cannot predict what technique will not have accomplished by the end of this century; it may, of course, have destroyed civilization but it may have solved numerous problems which have so far baffled us. The essential thing is to reject all theories of geographical determinism; it is man that matters. Rivers can be controlled and their courses changed. Mountains can be sources of [illegible] Deserts, once formidable frontiers can be tamed by better communications, brought under irrigation and can be made to yield [illegible] K. M. Panikkar has written that in China the Grand canal [illegible] North to South performs the duty of an artificial river and [illegible] the frightening gorges of the Yangtse were conquered many [illegible] turies ago to extend navigation up to Chungking.[1] The [illegible] that while geography may still be regarded "the most [illegible] and invariable factor in history", it can be transformed [illegible] effort.

Finally, the territory of a state comprises the [illegible]

1 *Geographical Factors in Indian History*, p. [illegible]

boundaries, its internal waters, for example, lakes, canals, rivers and harbours; its territorial waters, which comprise the sea within the 3 mile limit of its shores measured from low water-mark. This belt of sea is often called the maritime belt. This rule of 3 mile belt was introduced at the beginning of the 19th century as the portion of the sea which a state could control by means of land artillery. Now the range of land artillery having been considerably increased a number of proposals to increase the width have been made from time to time, but the three mile theory remains the accepted thing.[1] Lastly, the territory includes the air space over its territorial land and water.

Government And Sovereignty. If population provides the personal element and territory the physical, Government provides the organizational element to the State. It is an agency, an apparatus, an instrument through which the aims and policies of a society are formulated and executed. It may be of simple rudimentary type or it may be complex and elaborate. But it must be stable and must have the power and capacity necessary to enable it to enforce its commands and compel respect for its authority. From the point of view of international law, a government must receive a *de facto* allegiance from its subjects and must be in a position to carry out its international obligations. We shall consider Government in detail in later chapters.

The most important element—that which distinguishes it from other associations—is sovereignty (although this view has been challenged by the Pluralists) [illegible] has two aspects—it is external as independe[illegible] it is internal as paramountcy over [illegible] of state sovereignty within has been challenged by the Pluralists; without, it has been challenged by facts and realities of international relations. The evo[illegible] in the 19th century through the concert [illegible] law, periodic conferences, [illegible] etc. through the League of Nations and the Kellogg-Briand Pact seriously modified it. The scope of sovereignty was limited by obligations resulting from the minority treaties and the mandate system at the end of the first world war. It was further circumscribed by obligations undertaken by the members (now 111) of the United Nations so that the principles of the U. N. Charter can be called a 'new international law'. The U. N. has its own buildings, flag, personnel and immunities. As a welfare agency it has wide spheres of functions—education, health, social justice, economic progress, human rights, development of backward areas, communication, and transportation. All these limit the states' autonomy. Activities by the U. N. and the specialized Agencies to protect human rights, to punish genocide, and other international crimes, to regulate air navigation, radio wavelength, postal

1 The U. S. A. tried to challenge it in 1939-40. For details see M. G. Gupta, *International Relations Since 1919*, Vol. I, pp. 378-379.

Secondly, the State is a unity which is indivisible and immutable. It cannot be shared with any body and it is incapable of being either divided or of undergoing change.[1] Thirdly it is all comprehensive and exclusive. The sovereign jurisdiction of the state embraces authority over all persons and things within its territorial limits except those over whom it has waived its jurisdiction. It is exclusive because it alone has the right of political government within its own territories. It means that there can be but one state organization upon the same territory over the same people. It does not admit the right of another state to exercise jurisdiction within its territory, nor does it permit any other association or organization, domestic or foreign, to do so, except in cases of international obligations.[2] Again, the State is permanent. It means that a people once organized as a state remain always under some state organization. Additions or partial loss of territory resulting from cessions, conquest, or the operation of natural forces do not affect the judicial existence of the state. Of course, a state may be extinguished through annexation to another state, but here it is merely a transfer of soveireignty from one state to another and the people continue to remain under some state organization.[3]

But if all States are all-comprehensive, exclusive and permanent, then it follows they will be equal. The equality, therefore, is an essential attribute. But this is equality in law, not in fact. The legal principle is that just as all citizens without regard to their wealth or rank are held equal before the law, similarly all States whatever their size, their population, their economic or their military importance, are equal.[4] But their equality is only theoretical. They do not enjoy equal voice in international councils. As in the League, so in the U. N. representation to the executive organisation is based on power. The doctrine of State equality has now become, and in fact was always, inconsonant with facts. As Prof. Hicks said this doctrine was untrue in its origin, was preserved in international law by a virtual consent which is not followed by performance, and was bolstered up by false analogies growing out of a confusion in thought between international and positive law.[5]

1 W. F. Willoughby : *The Government of Modern States* (Revised and Enlarged Edition 1936), p. 9.

2 Burgess : *The Foundations of Political Science*, pp. 55-57.

3 *Ibid*, p. 56. "The State is permanent. It does not lie within the power of men to create it today and destroy it tomorrow as caprice may move them. Human nature has two sides to it the one Universal, the other particular, the one the state, the other the individual. Men can no more divest themselves of the one side than of the other, *i.e.* they cannot divest themselves of either. No great publicist since the days of Aristotle had dissented from this principle. Anarchy is a permanent impossibility".

4 Norman, Bentwich, *International Law* (Royal Institute Of International Affairs), pp. 16-17.

5 *American Journal of Int. Law* II, 1908, p. 535.

Last, but not the least, an important attribute of the state is force—the right to make use of such force as may be necessary to insure that its will when duly expressed is carried into execution. And not only must the State thus possess the right to employ force in order to compel compliance with its orders, but, as the possessor of supreme authority it alone must determine the form that the compulsion will take and the instrumentalities that will be employed in its exercise.[1]

Here again the U. N. Charter imposes limitations on the discretion of the states. But these limitations notwithstanding, in the ultimate analysis bayonet remains the Last Argument of the Kings. We may thus conclude that State is a human organization based on power which may be directed against other states at times or which is constantly used against the individual within. The use of force against other states is subject of international politics and international law. To this we have, in parts, referred earlier and will revert again. It is to the relationship in which the individual and the State stand that we may now turn. In broad temrs there are three ways of looking at the relationship between the citizen and the State of which he is a member. The first would lay its chief emphasis on the furtherance of the separate life and character of each man : admitting that he can attain his full development only under civic conditions that it provides and that it is only as a means to this development that the conditions themselves are of value. This doctrine has often been maintained by writers who take a metaphysical or religious view of life.[2] The second view which has been held by administrators and politicians is that the State is in itself the end; that to its welfare, progress, and stability all right action conduces, and that beside it all other aims and ambitions are insignificant. The third regards the relation between man and the State as one between persons, bound together by mutual rights and duties, by mutual responsibilities, and by a common purpose. This theory, ridiculed by some critics as unduly unimaginative, began to gain ground in the early part of the 19th century, though like most philosophic doctrines it may trace its ancestry back to Athens.[3] Modern state is based on this last view. It expresses itself in the form of a positive state to which this work is devoted.

So far we have discussed the State as a political concept and seen that as a political concept it consists of four elements.[4] We

1 Compare Lord's, *The Principles of Politics*, pp. 293-294; and refer to W. F. Willoughly's, *The Government of Modern State* (Revised and Enlarged Edition 1936) p. 10.

2 Mctaggart : egelianism and Cosmology Sec. 195. "Not society but the individual is the end of social life."

3 Hadow, *Citizenship*, pp. 69-70.

4 Sometimes a distinction is drawn between the abstract idea and the concrete concept of the State. The one is the result of abstract speculation tl other of concrete thinking. The first is what the German designate "Staatsidee

may also say a word about the State as a concept of international law. A unit which may not be a state as a political scientist would define the term, may be a state from the point of view of International Law. For instance in strict theory the Dominions are not state, yet from the point of view of International Law they are. A State in the sense of international law must be a fully sovereign and independent community with a legal capacity to enter into international relations and must possess the power and will to fulfil the obligations which international law requires of all members of the family of nations.[1] And then, it must have been recognised as such and admitted to membership in the international community on a footing of equality with other states though in recent times this view has come to be challenged. But strictly speaking according to international law a community may possess all the marks of a State as usually defined, in terms of political science, it is not a state until it has been received into the family of nations. Of course international law does not deny the existence of a state before it has been recognised, but it simply takes no notice of it.

STATE AND OTHER UNITS

We may now distinguish the State from the terms "Nation", "Nationality", "Government", and other "voluntary associations". The term "Nation" is derived from the Latin words Nasci (natus or natio) which means "to be born". Etymologically, therefore, a nation is a people having a common ethnic origin. Various writers have defined the term Nation variously. Mazzini defined a Nation as the group bound by a common past and governed by the same law.[2] Bluntschli defines nation as a union of masses of men, bound together especially by language and customs in a common civilization which gives them a sense of unity and distinction from all foreigners quite apart from the bond of the state.[3] According to Renan a nation is a spiritual principle, resulting from the profound complication of history; a spiritual family, not a group determined by the configuration of the soil".[4] It is a portion of mankind "united among themselves by common sympathies which do not exist between them and any others—which make them co-operate with each other more willingly than

being the idea of the State in its most general form. It is that idea which embraces all that is essential to, and which is possessed by all types of State life. It is the State reduced to its lowest terms. The empiric conception, on the other hand, is particular, and has reference to special civic types as historically manifested.

1 Garner, *op. cit.*, p. 56.

2 L. George, *Democracy and Its Rivals*, Chapter I.

3 *Theory of the State*, p. 90.

4 Harold Stannard, *What is a Nation* (Royal Institute of International Affairs) pp. 53-54.

with other people, desire to be under the same government, and desire that it should be government by themselves or a portion of themselves exclusively".[1] A population of an ethnic unity, inhabiting a territory of a geographic unity is a nation.[2] The French publicist Pradier-Fodere held that affinity of race, of customs and religion constitutes a nation. A body of people who feel themselves to be naturally linked together by certain affinities which are so strong and real for them that they can live happily together, are dissatisfied when disunited and cannot tolerate subjection to people who do not share their ties.[3] From one point of view nation is a body of men, inhabiting a definite territory, who normally are drawn from different races, but possess a common stock of thoughts and feelings acquired and transmitted during the course of a common history; who, on the whole, and in the main, though more in the past than in the present include in that common stock a common religious belief, who generally and as a rule use a common language as the vehicle of their thoughts and feelings, and who, besides thoughts and feelings, also cherish a common will, and accordingly form, or tend to form a separate state for the expression and realization of that Will.[4] From another point of view it is a group of persons who speak a common language, who cherish common historical traditions, and who constitute, or think they constitute, a distinct cultural society in which, among other factors, religion and politics may have played important though not necessarily continuous role.[5] It is a body of people united by a corporate sentiment of intensity, intimacy and dignity, related to a definite home country.[6] It is the will of a people to live together, and not race or language, which makes a nation. It is a cultural and spiritual unity and is the highest product of social evolution.[6] It is a Union of men inhabiting the same territory, whether or not subject to the same government and possessing such common inte- r[illegible]; to the s[illegible]s existing at a given time among all the individuals of the same social group, that there is an intimate and profound interdependence between the territory and the population which inhabits it. Thus a nation is an ethnic unity and is a spiritual unity. Some thinkers have defined nation as a political phenomenon. Lord Bryce defines the nation as "a nationality which has organized it-

1 *Representative Government* (Everyman's Ed.) pp. 359-360.

2 *Political Science and Constitutional Law*, Vol. I, p. 1. Also refer to Holcombe's "*Foundations of the Modern Commonwealth* (1923), pp. 131-132.

3 Ramsay Muir, *Nationalism and Internationalism*, p. 38.

4 Barker, *National Character*, p. 17.

5 Hayes, *Essays on Nationalism*, p. 21.

6 Zimmern, *Nationality and Government* (2nd ed., 1919) p. 52.

7 Barnes, "Nationalism" in the *Encyclopedia Americana* (1919). Also refer to his Sociology and Pol. Theory (1924), p. 187.

self into a political body, either independent or desiring to be independent."[1] Similarly, T. H. Green suggested that nation underlies the state "and thus state becomes the nation organized in a certain way." In this sense a nation may be said to be a people politically organized.[2] Thus Esmein defined the state as the Juridical personification of a nation.

Now, how does the State compare with the Nation? The term State is political, the term Nation is racial. A nation when it gets itself politically organized becomes a nation-state. Both are based on a feeling of unity. Sometimes the two are mixed up and are used in a common context. For instance we use the term "the French nation" while what is meant is "the French State". Or we use the terms "the League of Nations" or the "United Nations Organization" while what is meant is the League of States or organization of States. Similarly "national" according to the vocabulary of international law, is the subject or citizen of a State, or else a person who, lacking that character, is nevertheless protected by that State. The fact is that where one state has one nation, the two terms are used synonymously. But where one State has in it more than one nation, a distinction is to be made. Thus not every state is a nation and not every nation a state; one is sometimes broader sometimes narrower.

Sometimes a distinction is made between "nation" and "nationality." In the first place those writers who make this distinction apply the term 'nationality' not to a group of persons but to a peculiar principle or sentiment that actuates the group. For instance J. Holland Rose calls nationality "an instinct, a spiritual conception."[3] To MacIver, nationality is "a sense of community, a type of community sentiment, a sense of belonging together."[4] [illegible] that [illegible] the [illegible] na- [illegible] nern calls it "a form of corporate sentiment." But there is one objection to such view. If we call nationality "a sentiment, how shall we distinguish it from "nationalism"[7] which is a better

1 Lord Bryce, *Impressions of South America*, p. 424.

2 Rose, *Nationality in Modern History*, (1916), p. vi.

3 Rose, *Nationality as a Factor in Modern History* (1916), p. 147.

4 MacIver, *The Modern State*, p. 123; Also refer to his *Society : Its structure and Changes*, p. 66.

5 Barnes, *World Politics in Modern Civilization* (1930), p. 7.

6 Gilchrist, *The Principles of Pol. Sc.*, p. 26.

7 Zimmern's *Nationality and Government* (2nd Ed. 1919), p. 52. Distinguishing nationality from State, Zimmern says "Nationality like religion is subjective statehood is objective, nationality is psychological; Statehood is political, nationality is a condition of mind statehood is a condition in law, nationality is a spiritual possession statehood is an enforceable obligation, nationality is a way of feeling, thinking and living, statehood is a condition insepa-

term? In fact nationality remains a group and not "sentiment" and therefore the terms "nation" and "nationality" mean the same thing because both connote a homogenrous group aspiring to set up an independent state or having done so.

Of course, if we have to make a distinction between, "nation" and "nationality", we can make it on the basis of difference of numbers. From this point of view we can define nationality as being usually a distinct socio-ethnic group within a nation-state, and ordinarily constituting a minority of the total population.[1] Thus the Scotch and Welsh in Britain will be called nationalities."

In short, while State is a sovereign, political and territorial organization and a populational unit, Nation is an ethnic unity brought together by a sentiment which we may call the sentiment of Nationalism, and nationality is a smaller group within a nation state. Where a nation is politically organized it is called a nation-state.

ONE NATION, ONE STATE

There have been thinkers who have propounded the thesis of "one nation, one State" or of "mononational" state. J. S. Mill for instance, argued that it is a necessary condition of free institutions that the boundaries of governments should coincide in the main with those of nationalities. Free institutions, he said, are next to impossible in a country made up of different nationalities. Among a people without fellow-feeling, he argued, especially if they read and speak different languages, the united public opinion necessary to the working of representative government cannot exist. Therefore, when the sentiment of nationality exists in any force, there is a *prima facie* case for uniting all the members of the nationality under the same government.[2]

rable from all civilized ways of living". Compare this passage with E. M. Sait's *Political Institutions, a Preface*, pp. 341-351.

1 Compare Burgess *Political Science and Constitutional Law* Vol. I., p. 5. Gilchrist also reverts to this view on p. 27, *op. cit.* and MacIver in the *Modern State* on p. 123. Compare H. J. Laski's view "The Idea of nationality is not easy to define, for there is no measurable factor to which it can be traced. The fervid nationalism of America has made it clear that race is of dubious importance. . . . Language is a factor of unquestionable significance, yet Switzerland has been able to transcend the difficulties presented by a variety of tongues. Nor does political allegiance explain anything. The history of the nineteenth century is very largely the history of changes in allegiance effected in nationalist terms. The possession of a homeland is of high value in making a nation conscious of its separation yet, as the Jews bear witness, it may be rather the aspiration towards recovery than possession itself that is essential to the concept of nationhood. Broadly speaking in fact, the idea of nationality is, as Renan insisted in a famous essay, essentially spiritual in character." Laski: *A Grammer of Politics* (Reprint 1950) pp. 218-19.

2 J. S. Mill, *Representative Government* Ch. XVI, Everyman's Library Series, pp. 360-366.

Woodrow Wilson during the 1st World War in his speeches laid stress on what he called the principle of self-determination.[1] In his speech to the Congress on the 8th January, 1918 Wilson said "an evident principle runs through the whole programme I have outlined. It is the principle of justice to all peoples and nationality and their right to live on equal terms of liberty and safety with one another.."[2] In another speech dated 11th February Wilson said that peoples and provinces are not to be bartered about from sovereignty to sovereignty as if they were mere chattels and pawns in a game, that every territorial settlement must be made in the interest of the populations concerned, and that all well-defined national inspirations shall be accorded the utmost satisfaction."[3] Thus the doctrine of "one nation—one state", boils down to this : every people (nation) has a call and a right to form a State. As mankind is divided into a number of Peoples (Nations), the world must be divided into the same number of states. One state for every nation: nationality the basis of every state.

This theory has been attacked from various points of view. It has been argued that pushed to its logical limits this theory will lead to the disruption of many big states of the world. As Lord Curzon said the right of self-determination is like a two-edged sword, if in the past it has been a unifying force, in future it may become a disintegrating force. It is, therefore, argued that a multiplication of petty states would lead to chaos and warfare. But this criticism has little weight. You cannot deny to one what you have affirmed to another. Where a sentiment of nationality is well-defined, any attempt to suppress it will lead to warfare. In the second place it is argued that this theory is antagonistic to the idea of sovereignty. Now, if the complete right of self-determination be conceded to a nationality and the right be enforced against the wishes of the sovereign of a State, the theory of Sovereignty is negatived. But it must also be remembered that the local independence of the sovereign state was at first connected with the right of the inhabitants to choose their own form of government. Thus every group of sufficient permanence and with enough of a distinct tradition to have a 'national' character, should have an opportunity for developing its own forms of Government.

Thirdly, it is argued that the ideal of mono-national State cannot be realized for the reason that it often happens that different nationalities are so intermingled as to make it impracticable

1 Refer to Wilson's speech to Congress on 8th January 1918 wherein he has outlined his famous Fourteen Points; Speech to Congress on 11th February, containing his Four Principles, speech at Mount Vernon on 4th July containing Four Ends. For relevant extracts from these speeches refer to M. G. Gupta, *International Relations Since* 1919, Vol I, pp. 7-12.

2 *Ibid.*, p. 9.

3 *Ibid.*, p. 10.

to organize each into a separate state. Political institutions can grow in states composed of many nationalities. Mill's statement that free institutions are next to impossible in a country made up of different nationalities is not supported by facts. Switzerland is a typical case. Or take the case of U.S.A. which is almost a museum of races and yet representative institutions are working in U. S. A.

Other criticisms of the "mono-Nation State theory are given by Gumplowicz, Bluntschli, Hayes and Lord Acton. There is no historical or sociological justification for the view, thus argues Gumplowicz, that a mono-national state necessarily possesses elements of strength which are lacking in those comosed of a number of distinct nationalities. On the contrary, he maintained that there is often a larger degree of popular freedom in poly-national states than in those whose populations are ethnically homogenous, e.g. Switzerland.[1]

The most vigorous attack on the theory of mono-nation state is, however, made by Lord Acton, who holds that the progress of Society depends on the mixture of races under the same government.[2] "The combination of different nations in one state", he argues "is as necessary a condition of civilized life as the combination of men in society. Inferior races are raised by living in political union with races intellectually superior....It is in the cauldron of the state that the fusion takes place by which the vigour, the knowledge, and the capacity of one portion of mankind may be communicated to another".[3] Similarly, Zimmern argues that "nations, like men, were made not to compete, but to work together".[4]

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defined nationality desirous to have a separate political organization, it must be allowed to have it. But, on the other hand, we must not forget that in units like the Commonwealth of Nations and the Soviet Union different nationalities are learning much from each other.[1]

STATE AND COMMUNITY

We have seen that State is not a Nation, nor a nationality. It can also be distinguished from a Community. A Community may be defined as a complex of social life—a complex including a number of human beings living together under conditions of social relationship, bound together by a common, however constantly changing, stock of conventions, customs, and traditions, and conscious to some extent of common social objects and interests.[2] Thus we speak for the village community, the Student Community, the Official Community, the Workers Community, *etc.*, The term Community emphasises the "community of objects and interests". When, however, some persons have common political objects, they come and unite irrespective of their nationalities. Thus we speak even of an international community. State, on the other hand, is a community politically organized. Distinguishing the State from community MacIver says : "Everywhere men weave a web of relationships with their fellows, as they buy and sell, as they worship, as they rejoice and mourn. This greater web of relationships is society, and a community is a delimited area of society. Within this web of community are generated many controls that are not governmental controls, many associations that are not political associations, many usages and standards of behaviour that are in no sense the creation of the state. In the community develops the law behind law, the multi-sanctioned law that existed before governments began and that the law of government can never supersede. Without the prior laws of the community all the laws of the State would be empty formulas· Custom the first "king of men" still rules. The modes still prescribe. Manners and modes still flourish. The laws made by governments cannot rescind them, cannot long defy them or deeply invade them".[3]

SOCIETY

The term "Society" is used in a variety of senses. For instance we speak of the Great Society or Human Society. Here what

1 For the detailed treatment of the Soviet Union and Nationalities refer to G. D. H. Cole and Margaret Cole, *A Guide to Modern Politics*, pp. 434-441.
2 *Ibid.*, pp. 384-385. Compare his definition with the one given by Ogburn and Nimkoff in *A Handbook of Sociology*, p. 269. "A community may be thought of as the total organization of social life within a limited area. Human social life is characteristically carried on in such Communities. They are the loci of group activity of institutional organization, and of the development of human personality."
3 MacIver, *The Web of Government*, pp. 192-208.

is meant is the big association of Man and in this sense the term Society includes all Men and is used as what T. H. Green calls 'Universal brotherhood".[1] This use is rather very wide. From this point of view Society becomes the whole of which State becomes the part and, therefore, Society becomes a limitation on the State. The same view was also held by Kant who emphasises the necessary subordination of the State to a bigger brotherhood or society.[2]

The term Society is sometimes used in the Greek sense. Both Plato and Aristotle[3] maintained an identity between Society and State. To them Society was the State and man was both and at once a social and a political animal. Hegel accepted this view and suggested that State is the whole complex of influences arising from the fact of association. From this point of view Church and State become two sides of the same spiritual organism. But just as we must distinguish Church and State, so we must distinguish State and Society. Failure to distinguish Church and State merges the Church in the State and produces the mere territorial Church as an appendage of the territorial State. The result is a goodbye to toleration and regulation of religious life by the State. Similarly, failure to distinguish State and Society may lead to unlimited State regulation of life. Thus the use of the term Society as the British Society (*i.e.* British State) or French Society (*i.e.* French State) is not only misleading but also dangerous. The term Society is also used, as Herbert Spencer used it, to mean an ideal State.[4] Spencer divides the social evolution into[5] stages and suggests that the first stage is a "military State" and the other is that of "industrial Society" when there will be no State. But Spencer does not answer the difficult question as to "who will hold the Society together"? Society, we know, is held together by the State, and if it were not thus held together it could not exist.

1 Earnest Barker, *Pol. Thought from 1848 to 1914* (The Home University Library), p. 43.

2 *Ibid.*, pp. 26-27.

3 Earnest Barker, *Greek Pol. Theory : Plato and His Predecessors* (Fourth Edition 1951) pp. 11-12.

4 *Ibid.*, p. 11, "Much depends on keeping the State distinct from society, and preserving the mediatory and corrective authority, pure and intact from the influence of the interests, which it controls. To secure that distinction, and that integrity is as much a concern of the modern State as it was of the ancient. There is still the danger that some social class, some economic interest, may infect the purity of the State, and, capturing the powers of the Government direct them to its private advantage. On the other hand, there is always a danger that the State may harden into a repressive trust, which prevents the free growth of society, as it may be said to have done in the later days of the Roman Empire, when such organs of society as the municipium or collegium, were rigorously regimented and controlled."

5 Spencer contrasts the "Military State" from an "Industrial Society"—*Social Statics* (1850), pp. 26-59.

Therefore, Spencer's use of the term Society is not universally accepted. The term Society is sometimes used to denote voluntary associations that spring up in modern life. For instance, we speak of the "International Law Society" or "Physics Society" or "Debating Society" and so on. But here we are probably misusing the term. We have a better word to describe these institutions— the "association".

How, then, shall we distinguish the term Society from the term "State"? We have seen that Society is not bigger than State; *that Society is not State; that Society is not smaller than* the State. Both are human, both have a moral purpose. But Society works through co-operation and persuasion; State works through coercion. The methods of Society are elastic; the methods of State are rigid.[1] The Institutions of Society are social, those of State are political. The morality of Society is social, the morality of state is political. The Society expresses itself through customs; the State through laws. The agents of society are social workers; those of the State are political officers. Thus the play of society ought to modify the action of government, and the State ought to respond the new social developments. Society is the repository of public opinion. State is its executor.[2]

GOVERNMENT

Finally, State can also be distinguished from Government. But there have been thinkers who have identified the State with the Government. For instance the French writer Henri Chardon says "we know well enough what the State is : according to the era, it is Louis XIV, Napoleon I, William II, Czar Nicholas, Mussolini, Millerand, Poincare, or their ministers...... There is nothing else in the State". A State is nothing more or less than the political machinery of government in a community. The civilized world of today consists of a number of independent and sovereign communities. Each independent Community expresses itself in its relation to others through its machinery of govern-

1 Barker, *Political Thought from* 1848 to 1914 pp. 66-67. "It is safer to distinguish as we in England have always distinguished, between society (*with its "social" atmosphere, its "social" morality and its "social" institution*) and the State (with its political institutions, its laws, and its officials). Both are sustained by the same moral purpose they overlap, they blend, they borrow from one another. But roughly we may say that the area of the one is voluntary cooperation its energy that of goodwill, its method that of elasticity; while the area of the other is rather that of mechanical action, its energy force, its method rigidity."

2 Refer to Soltau, *An Introduction to Politics*, pp. 41-42. Speaking of the essential differences of State and Society, Soltau says "Their geographical areas may be the same though certain social activities will probably be closely linked to those of other communities, their membership may be indentical, but they are distinct in origin, aims and functions Society is natural and instinctive, the State is the creation of will and reason."

ment *i.e.* through the State. Each independent Community uses its State also for many internal acts. States are thus governmental institutions existing to express common purposes and undertake common actions on behalf of Communities. As Laski puts it : "A working theory of the State must, in fact, be conceived in administrative terms. Its will is the decision arrived at by a small number of men to whom is confided the legal power of making decisions. . . . The State is in fact that small body of men to whom is confided the legal power of making decisions. The State is in fact that small body of men to whom the actual operation of its will is confided. . . For the state is, for the purposes of practical administration, the government.[1]" The same opinion is held by Duguit and W.G. Sumner and A. G. Keller.[2] Thus viewed we speak of the British Government or the Indian Government while we mean the British State or the Indian State. It is clear, then, that there is a confusion in the uses of the terms State and Government.

The main cause of this confusion is historical *i.e.* the history of the word "State". The actual State has existed for thousands of years. But the word that is now applied to it—"the State"—has been in use for little more than four centuries; and it was applied at first to the ruler or government, not to the territorial society.[3] Throughout the middle ages "State" was used for "authority" "monarchy" "parliament". Thus even now we speak of "Secretary of State". The word "lo stato" was first applied to the rulers and their dependents. In the 16th century the word "State" implied "Government". It was not until the

1 Laski, *A Grammar of Politics*, pp. 35, 41 and 131.

2 W. G. Sumner and A. G. Keller, *The Science of Society*, Vol. I (1927), p. 699, "A State is a group occupying a defined territory in so far as it is organized so as to make its force available to execute its will within and without as formulated by the constituted authorities. More specifically, the word refers to the organization and regulation alone. . . ." In this context that famous story of the French peasant who had come from an outlying district of Brittany into Paris and had taken his way to the Chamber of Deputies is both representative and instructive. Dressed in his quaint costume, with a covered basket on his arm, he was about to enter the building when a gendarme stopped him and asked him what he wanted. 'I come to call on the State', he said. 'What do you mean by that', asked the gendarme. 'Why' he replied, 'I have been noting in the newspaper lately that the State has been making provision for the education of the children of France; that the State has been trying to improve the conditions of the laboring people, that the State has been taking measures to relieve the farmers from some of their burdensome taxation and noticing that the State has been doing so many good things for us poor people I felt that I would like to come to see the State and express my gratitude to her, and I have brought in this basket a goose for a present'.

3 H. C. Dodwell, The word 'state' *Law Quarterly Review* Vol. XXXIX (1923), pp. 98-125. Also refer to Polland and Barker's "The Word State", *London Times Literary Supplement*, Sept. 3, 1920, p. 618.

19th century that the "State" acquired its modern meaning.[1] Today, of course, we can, to a certain extent distinguish the State from Government.[2] Government is only one essential element of the State; it is the executive committee of the State; its instrument or agent. The government, therefore, is part of the State which is the whole. The State is a sovereign Community politically organized for the purpose of a common end; whereas Government is the organ of that state to formulate its will and to realize the end in view. State consists of all the citizens, Government consists of a smaller number of the total number. The State is Sovereign, while the Government has limited authority. Of course in countries where State is the Government, things will be different. Thus normally considered, the powers of the Government are merely derivative, being delegated by the State through the Constitution. The State is abstract; the Government is concrete. Finally, states are so long-lived that the quality of permanence is usually attributed to them. Of course, a state may disappear. Like Carthage, it may be conquered and annexed. Like Scotland, it may, without compulsion, merge its identity with that of another State. But what distinguishes it from Government is that a change of Government does not annihilate its existence. Violent internal commotions and changes even in the form of Governments do not affect its existence. The Russian State or the Chinese State persisted through the revolutions of 1917 and 1949 respectively.

But although we may distinguish between State and Government, the fact remains that, at a given time and in a given territory, the Government tends to incarnate the State as its sole agent and representative because it wields in its name and on its behalf that legal coercive authority which is characteristic of the State, and in daily life it is not so much with the abstract state as with the government that the ordinary man comes into contact. For those who seek concreteness rather than abstraction the State is

1 See Hadow, *Citizenship*, pp. 69-72.

2 W. W. Willoughby in *The American Constitutional system*, American State Series (New York, 1904) pp. 3-4 makes the following distinction : "An aggregate of men living together in a single community and united by mutual interests and relationships we term a society. When there is created a supreme authority to which all the individuals of this society yield a general obedience, a State is said to exist. The social body becomes, in other words, a Body Politic. The instrumentality through which this superior authority formulates its will and secures its enforcement is termed a Government; the commands it issues are designated laws; the pesons that administer them, Public Officials, or collectively a Magistracy, the whole body of individuals, viewed as a political unit, is called a people; and finally the aggregate of rules and maxims, whether written or unwritten, that define the scope and fix the manner of exercise of the powers of the State, is known as the constitution. The State itself, then, is neither the People, the Government, the Magistracy nor the Constitution. Nor is it indeed the the territory over which its authority extends."

nothing but the Government and assumes complete reality only in the Government.[1] It is the type of government in power that gives any state its distinctive political form. When we say that Britain is a constitutional monarchy, we mean both State and Government at the same time.

State distinguished from voluntary associations. We have seen that State is distinct from Society or Community, Nation or Nationality and Government. But some times it is argued that State is a human association and therefore can hardly be distinguished from various other associations. On the contrary, it is held, that the State is just one of these associations. The State can be distinguished from these associations. These associations, as is obvious, are voluntary in character, *i.e.*, their membership is voluntary, whereas the State is a compulsory institution. Therefore whereas a man may give up the membership of a voluntary association, he cannot afford to do away with the membership of a State. To any one State he must belong. Stateless persons are few. But whereas a man may join more than one association, he cannot belong to two States at the same time. He cannot be a citizen of more than one State. Moreover, a State is confined within a definite territory; that is, it is territorial; while, on the other hand, an association may be extra-territorial and extend to the whole world. Further, these voluntary associations are limited to a few particular interests, whereas the State is concerned with the totality of interests. It comes into existence, Aristotle said, for the sake of life, it continues for the sake of good life. And since this good life is a continuous process, state becomes permanent and enduring, whereas the other associations have only temporary existence. They may dissolve after accomplishing their ends. Some of course, persist and endure. The most important distinction between the State and other human associations, however, is that the State is sovereign and supreme,[2] while other associations have not the legal power to command or enforce obedience. They cannot punish any member for disobedience. Thus voluntary associations are subject to the control of the State. They exist only with the consent of the State, even though they may very materially influence the course of action of the State.

1 Croce, *Politics and Morals*, (London 1946) p. 25. "The State politically understood, that is, the State by itself is as we know one and the same thing as the government; it is a relation based on authority and consent which has its enemies, and treats as such those who do not accept it and intend to change it. According to circumstances, they are called traitors, conspirators, undesirables, and they are executed, imprisoned, exiled and persecuted and punished in other ways."

2 We have already seen earlier in this chapter how in recent years the sovereignty of the State has been modified.

tory, States have been classified as maritime or land-locked, insular or continental. Similarly, the character of population may vary, a population may be racially homogenous or heterogenous, and in proportion the States may be classified as nation-States and multi-national States. On the basis of occupation of the people States can be classified as industrial or agricultural.

Then, again, the States may be classified on the basis of difference in the structure of Government. But this will not be a classification of the States, it will rather be a classification of the Government itself to which we may revert later. There might be differences too in respect of the location of sovereign power and on this basis States may be classified. For instance, if sovereign power belongs to one, we may call it monarchy, if to few, aristocracy and if to all, democracy. We can also classify states from the point of view of differences in the purpose which each State regards as vital to it. The purpose may be good or bad; human or inhuman and on this basis we may classify states as cultured and uncultured, healthy or corrupt. Finally, we may classify states from the point of view of International Law.

Of these various principles of classification many are useless from our point of view. The classification of states on the basis of mere size, or occupation or situation do not materially help a student of Political Science. China with its huge population or territory may not be so important to us as Switzerland with its small area and small population. Of what avail it is to us if somebody informs us that England is an industrial country. It might be important for an economist, indeed in a different context it might be relevant even to us. But for us the valid principles of classification of the state have to be political. Thus we are left with three bases: Governmental structure, Location of Sovereign Power, and International Law. It is from these three bases that any classification can be of some value to us.

But even here it will be seen that an attempt to classify states is really an attempt to classify governments. Aristotle's classification which we shall shortly consider, was really nothing more than a classification of governments on the basis of the number of persons who exercised, or had the final right to exercise, the power of government.[1] An attempt to classify states on the basis of International Law will ultimately result in a search of those who hold the final power of saying the last word in international affairs. Thus we may conclude that States as such cannot be classified,[2] and pass on to consider the forms of Government.

1 Garner *op. cit.*, pp. 244-245.

2 Refer to Willoughby, *The Nature of the State*, Chap. XIII. Contrast the line "It need not be said that there can be no such thing as a classification of states. In essence they are all alike, each and all being distinguished by the same sovereign attributes." Also compare Leacock, *Elements of Pol. Science* p. 108-109. He says "Some writers have held that we ought not to speak of

FORMS OF GOVERNMENT

Form of government is in fact the product of numerous factors, historical, geographical, social, economic, psychological. Some are comparatively permanent, others keep on changing. And the direction of the change is never constant. There may be at certain times a tendency towards a certain type of organization —constitutional monarchy, republic, dictatorship, collectivism —but it is neither universal, nor is even in one state consistent. The most that can be said is that over a number of years, the majority of states seem to indicate a move which so far has been along two main lines, distinct though connected. First as regards political forms, from irresponsible to limited monarchy, and from limited monarchy to republic, in other words towards more popular control. In England in 1593 Queen Elizabeth said "It is in my power to call Parliaments and it is in my power to determine the same." Chief Justice Coke a few years later answered "The King hath no prerogative but what the law of the land allows him." That illustrates the change from irresponsible to limited monarchy.

In the second place as regards social organization, the evolution has been from irresponsible *laissez-faire* to various forms of economic control or planning, this also being due to the pressure of popular forces. Of course, there is no uniform progression in that direction and there have been curves.

From another point of view Governments have moved from lower to higher forms—*i.e.* from alliance to confederation; from confederation to federation, from federation to complete Union.[1] Thus a unitary State may assume obligations towards another state by entering an alliance for mutual defence. Finding a mere alliance inadequate, it may take the next step and enter a confederacy, creating some common organ, which acts for all the members in the conduct not only of war, but also of foreign relations. Even such a loose association accustoms the confede-

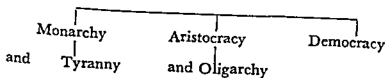
a classification of States since all are identical in their essential attributes They prefer to classify instead the different "forms of government" seen in the State. The objection does not seem well taken. The difference in structure of government constitutes the basis of classification but we may on that basis either speak of the various "forms of Government" or "forms of State."

1 Compare E. M. Sait's, *Political Institutions : A Preface*, pp. 374-376. He says that "in a rough way the tendency may be observed even in the process by which countries like England and France and Spain were unified, although varying degrees of particularism were not indicated by such terms as "confederacy" or "federation". Scotland and England were joined for a century in a personal Union, with it common nationality. In 1707 they became a single state, but in actual practice, the Union has a quasi-federal nature since parliament does not interfere with Scotch institutions (such as the legal system, local government, and the Church) except with the approval of a majority of the members from Scotland."

rates to act together, gives them a sense of solidarity, prepares the way for a more perfect union. Federalism, at the next stage, implies the disappearance of local sovereignty. One State takes the place of several but a vestige of the old relationship survives in a peculiar balance between Central and Local authority in the State. Finally, the federal balance gives way to complete unification. These successive forms, therefore, may be regarded as a biological series. It is by no means of universal application; what we have here is a tendency, not a law. That such a tendency exists is shown by the examples of America, Germany, Switzerland and the United Provinces of the Netherlands.

The earliest scheme of classification of Governments with which we are familiar is one given by the Greek thinker Herodotus who for the first time talked of monarchy, aristocracy and democracy. According to him the monarch tends to degenerate into a tyrant, while democracy makes all even equal before the law. But democracy readily becomes mob-rule and a government by the best men is certainly preferable. And nothing can be better than the rule of the one best man.

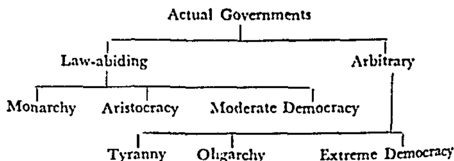
Socrates believed that government was an art and as such demanded a knowledge which was not to be found in democracy with its incapable assembly and equally incapable officials and required an unselfish regard to the subjects' good which the tyrant could never show. This would suggest a classification of States according as their rulers were unselfish and wise, or selfish and unwise. But the Socratic classification as reported by Xenophon is different. He took monarchy, aristocracy and democracy as the three main forms. Then he subdivided monarchy and aristocracy into a good and a bad species. Thus if the king has respect for the law and if his rule was based on the consent of the subjects, it was a case of Monarchy. If not, it was Tyranny. If it was a case of the rule of those who had merit and capacity, it was aristocracy. If on the contrary wealth ruled, it was oligarchy. And Socrates condemned Democracy (of which he only made one type) for want of knowledge which it showed. Thus he classified government as



out of these 5, two—monarchy and aristocracy were good and the other three—Tyranny, Oligarchy and Democracy were bad.

Plato has given two schemes of classification—one in "The Republic", and the other in the "Statesman". In the Republic it is hardly a scheme of classification. In fact there he puts the "ideal State" at the top and the "actual States" are arranged as

successive degenerations the one from the other. Thus the corruption of the ideal State is Timocracy or the military State, its corr ich, its corruption is "he Statesman" a more "ideal State" or a p is divine and, therefore, too perfect for human affairs. It is distinguished from all actual states by the fact that in it knowledge rules and there is *no need for law*. Then he develops the classification of "actual States". In the first place he divides all actual Governments into two categories : (1) Law-abiding States or good; (2) Arbitrary States or bad ones. And in the second place on the basis of number he subdivides each of the two categories into three parts each.



And on top, of course, there is pure monarchy, the ideal state. Thus Plato developed seven forms of Government of which one is ideal and six are actual. Thus the rule of one yields monarchy and tyranny; the rule of a few aristocracy and oligarchy; while the rule of the many give moderate and extreme Democracies. And he makes democracy the best of the lawless states, though the worst of the law-abiding states. Both forms of democracy are therefore better than oligarchy.[1]

Aristotle adopted both the principles of Plato's classification—the principle of number and the principle of quality and added a third principle—that of a cyclic order.[2] Thus to Aristotle "every form of government must contain a supreme power over the whole state; and that supreme power must necessarily be lodged with one person or a few, or many. We usually call a State that is governed for the common good by one person, Monarchy; by a few, an Aristocracy; and by the many, a Polity. When the government pursues selfish ends, instead of serving the interests of the community, and when the three types are, therefore, perverted or corrupted other terms are employed. Monarchy now becomes tyranny, aristocracy becomes oligarchy, polity degenerates into democracy.

1 Sabine, *A History of Pol. Theory*, pp. 74-75.

2 Wilson, *The State* (London 1899) Sec. 1397, pp. 577-578.

	Rule of one	Rule of few	Rule of many
Good	Monarchy	Aristocracy	Polity
Bad	Tyranny	Oligarchy	Democracy or Mobocracy

This classification is based on two principles—(1) the location of sovereign power; (2) purpose or spirit of the rule.

But Aristotle suggests that these forms evolve. He was a student of history and based his conclusions on observation. He outlined a cycle of degeneration and revolutions through which state passes. The natural first form of government for every state would be the rule of a monarch. Gradually, the monarch gets degenerated and passes into a tyranny. The united efforts of the more powerful magnates of the community overthrow the monarch and set up an aristocratic government. But gradually aristocracy also loses the public spirit and lapses into oligarchy. Against this regime the citizens as a whole break into successful revolt and establish a "polity" or in modern terminology a democracy. Pushed to the extreme, democracy is converted into the oppression of the rich by the masses, and thus becomes mobocracy. The intolerable confusion that results is brought to an end by the emergence of an all-powerful warrior-statesman who establishes himself as a king. Thus the cycle has run its course and begins again. This theory of political change was corroborated by the history *of the Greek city states. Even in recent history examples* are found of a more or less complete political progression of this sort. Consider, for instance, the history of revolutionary France.[1]

A number of criticisms, some valid, some invalid have been launched against Aristotelian classification and the literature on the subject is vast.[2] It has been suggested by Von Mohl that

[1] Leacock, *op. cit.* pp. 111-112. Polybius (104-122 B. C.) with a slight modification adopts the same classification as Aristotle. He talks of (1) Kingship and Despotism; (2) Aristocracy and oligarchy (3) Democracy and Ochlocracy (Mob-rule). Polybius also adheres to the Aristotelian idea of cyclic order and says "This method I have assumed to be especially applicable to the Roman Constitution, because its origin and growth have from the first followed natural causes." The Histories BK. VI, Secs. 1-9. Schuckburg, Vol. I. pp. 458-466. Also refer to Cicero (The Republic II, (3). He says that the best form of government is a moderate mixture of loyalty, nobility and democracy.

[2] Refer, in main, to Charles H. Cooley, *Social Organization* (Mev. Ed. 1920) pp. 120 et seq. Wilson's State (1899) pp. 578-580. Seelez's *Introduction to Political Science* (1896) pp. 45-46, 48-49. Heinrich von Treitschkp's *Politics* (2 vols. 1916) Vol. II p. 8-9 Burgesse's *Pol. Science and Comparative Constitutional Law* (2 Vols. 1890) Vol. I, p. 72; Sait *op.cit.* p. 409-413; Garner *op. cit.* p. 245-246. Leacock, *op. cit.* pp. 111-113.

Aristotelian classification does not rest on any organic fundamental principle but upon mere numbers, and hence is mechanical rather than spiritual, quantitative rather than qualitative in character. The distinction, for instance, between aristocracy and democracy is merely numerical. But to this criticism a reply is made by Burgess who calls it as "not only an unjust but a crude and careless criticism".[1] He contends that the numbers and proportions are used simply to indicate how far the consciousness of the state has spread through the population and to note the degree of intensity with which that consciousness is developed, and the principle is that no part of the population in which the consciousness of the state is strongly developed can be kept out of the organization of the state, and that, therefore, the number inspired with this consciousness and participating in this organization really does determine the organic character of the state. Thus the number of ruling persons may indicate the degree to which political consciousness has spread among the population and hence the capacity of the people for self-government. The critics point out that the Aristotelian classification is scarcely applicable to the states with which we have to deal today.[2] In view of the wide differences between the country States of the present and the city-States of Aristotle's day, his classification is now obsolete.[3] It is pointed out by Wilson that there is no longer any space between monarchy and democracy, for aristocracy has been crowded out. It is also suggested that his classification does not apply to constitutional or limited monarchies. If a democracy means a system in which the political power lies in the mass of the people, Great Britain is to be classed as such, and falls into the same category as the United States, notwithstanding the obvious formal difference between these two governments. If, on the other hand, having regard to the existence of a titular sovereign, Britain is merely described as a monarchy, the classification, while correct in a purely formal sense, is evidently unsatisfactory. Moreover, his classification does not take into account the difference between a federal and a non-federal or unitary government. Nor does it make any distinction between governments according to the differences of the constitutional relation of legislature and executive. Again, it can be argued that his classification does not apply to mixed constitutions. As Seeley pointed out, the English Constitution is a beautiful compound of all three types, for, here we have a monarch, a House of Lords (aristocracy), a

1 *op. cit.* p. 72.

2 Refer to Seeley, *op. cit.*, p. 45.

3 Compare Treitschke quoted in Gettell's Readings *op. cit.*, P. 8. "Nothing is achieved" he says, "by the ancient trinitarian division derived from Aristotle. It brings home to us once more that his outlook on the Universe was a narrow one and is no longer adequate for the study of the multifarious aspects of modern political life." And then Treitschke gives his own "tripartite classification"—Theocracy, Monarchy and Republic.

House of Commons (democracy). Aristotelian classification will not apply to this type.

But it should be remembered that essentially the States of antiquity were not different from those of today, and, therefore, Aristotelian classification is as valid today as it was in his own day. Aristotle was quite conscious of the mixed constitutions. In any situation Aristotle's criteria are valuable and by applying them (*i.e.* Aristotle's criteria) we are led to search for the realities in each political system, to recognise periods of transition, where one form is gradually giving way to another, to appreciate the relative efficiency of factors that may be no more than survivals after a shift in the political centre of gravity or may illustrate a national propensity, like that of the Romans and the English, to preserve old forms and effect some kind of a balance through compromise. In short, Aristotle's classification, though not exhaustive, still serves as a most excellent frame.

Another criticism against Aristotle is that today there are practically no civilised states where actual sovereignty, political as well as legal, is reposed in a single person or a class of persons. Today it is the people who are sovereign. Therefore the classification of State on the basis of the location of sovereignty is practically worthless. As Charles H. Cooley points out that Democracy is permanent and is destined to be universal and, therefore, the consideration of any other type is a waste of time.[1] But democracy may be "destined" to be universal, it is not yet universal. Today there are states which are not democratic. Aristotle's classification is one of "actual" States and has its value even now. Finally, it may be argued that Aristotelian Cycle is rather mechanical and does not represent a normal course of political change. But it should be remembered that Aristotle only indicated a tendency; he did not suggest that it was necessary. And as we have said above, even in recent times examples are found of a more or less complete political progression of the sort Aristotle suggested.

Bodin gave a tripartite classification of government on the principle of location of final power and called them as Monarchy, Aristocracy and Democracy. The same principle is adopted by Hobbes. Both reject the theory of perverted forms of government emphasised by Plato and Aristotle. People impute perversion, by such terms as tyranny or oligarchy—that is their argument—only because they dislike the exercise of a power, just as they use terms of approval, like Monarchy or Democracy, if they like it. There is certain to be sovereign power, somewhere in every government and the only question is who has it. For the same reason there is no mixed government and no limited government, since the sovereign power is indivisible.[2] But both were juristic thinkers and, therefore, their classification is legalistic. They ignored the real facts of political life.

1 C. H. Cooley, *op. cit.*, p. 120.
2 *Ibid.*, p. 171.

In more modern times, Harrington's classification of the government was partly traditional and partly original. It was based upon his theory of the balance of landownership. He used the traditional threefold classification—monarchy, aristocracy and democracy, with the three corresponding perversions derived from Aristotle, but his revision was so original that it completely modified the older tradition. His 3-fold classification consists of (1) absolute monarchy, (2) mixed or feudal monarchy, and (3) the commonwealth, each form depending on typical forms of land tenure. If the king can keep the control of the land in his own hands letting it out to a large number of small tenants who can be forced to give military services to the king, the result is absolute monarchy, a government of military type exemplified by Rome in the days of the imperial despots and by the Turkish Empire. When the land passes into the hands of a relatively small number of nobles, who control large bodies of their retainers, a mixed monarchy results. This is inevitably a weak form of government. Finally if the great feudal estates are broken up and the nobility are unable to support great troupes of retainers, the foundation is laid for a commonwealth or popular form of government.

Thus Harrington's classification leaves room for what may be called "perverted" forms of government but these are merely cases in which, for some temporary reasons a government exists which does not accord with the balance of property. In this sense the monarchy of Elizabeth was a perversion.[1]

As for Montesquieu, for him as for Aristotle the types or species of government were fixed, they are merely modified by the influence of their environment. Montesquieu proposed division of government into 3 classes—(1) Republican, (2) Monarchical, (3) Despotic. Republican government was that in which the people as a body, or even a part of the people, has the sovereign power; monarchical, that in which a single person governs, but only by fixed and established laws; whereas in despotic government a single person, without any rule or law, conducts everything according to his will and caprice.[2]

But this classification is not based on any principle at all. In respect to the number of rulers, monarchy and despotism fall together, and in respect to constitutionalty, a republic can be as lawless as a despotism. Moreover, the idea that despotic governments have no law was a fiction, as was also the idea that 3 kinds

1 Harrington, *Oceana*, Edited by Henry Morley, pp. 15-72.

2 "To each of these forms there is a principle, or motive force in the character of subjects, from which its power is derived and which is necessary to its continuance and functioning. Thus popular government depends on the civil virtue or public spirit of the people, monarchy depends upon the sense of honour of a military class and despotism depends upon the fear or slavishness of its subjects." Sabine, *op. cit.*, p. 555.

of government conceived by him correspond respectively to small, middle sized, and large states.[1]

Rousseau offers a division of governments into monarchies, aristocracies, and democracies, subdividing aristocracies into natural, elective and hereditary. He also admits the existence of mixed forms of government.

The most noted German writer Bluntschli adds to the tripartite Aristotelian classification, a fourth element, namely, Theocracy whose perverted form he called "Ideocracy". He also gave a list of secondary forms which he considered necessary to complete the Aristotelian classification, namely, free, half-free and unfree states. He held that Theocracies tend to become unfree states; aristocracies tend to become half-free; and Democracies naturally belong to the free class, although they may become despotisms. But Bluntschli added confusion by attempting to classify states as civilized monarchies, patriarchal kingship, feudal monarchies, military and judicial principalities, absolute, limited and constitutional monarchies, compound states, and various others.

Now, Bluntschli's classification is open to serious objections. It is unscientific and fallacious. For, even granting the validity of the fourth class (*i.e.* Theocracy), it lies crosswise of the other three and is not exclusive of them. We might have a theocracy that had the form of a monarchy, an aristocracy, or a democracy. Burgess calls this classification as "fanciful and as lying within the domain of "political mysticism." "The person or body of persons who in the last resort interpret the will of God or of superhuman spirit or the idea for a given people, and who give their interpretations the force of law, constitute the state. It signifies nothing that that person or body of persons may have professed, to derive his or its powers, so long as the will of God or of the superhuman spirit or the principles of the idea can only be known and legally formulated through him or it." This view partly finds support in the Preamble to the Constitution of the Islamic Republic of Pakistan which went in force in 1956 but which was later abrogated by the present dictator—Ayub Khan. It was stated in the Preamble : "In the name of Allah, the Beneficent, the merciful whereas the sovereignty over the entire Universe belongs to Allah Almighty alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust.. . . ." Article 198 of this constitution provided that no law shall be enacted in Pakistan which is repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah (Injunctions of Islam) and that all the existing laws shall be brought

[1] *Ibid.*, p. 556. "It cannot be supposed that this classification of forms of government was in any sense produced by observation or comparsion. As a venture in political realism it was not comparable with Harrington's theory that governments may be classified. According to certain forms of land tenure, Montesquieu seems to have followed merely a subjective interest motivated by his ethical reaction to the political problems of France."

into conformity with such injunctions. A Law Commission was to be appointed in order to recommend measures for bringing existing law into conformity with the injunctions of Islam and "to compile, in a suitable form, for the guidance of the National and Provincial Assemblies, such Injunctions of Islam as can be given legislative effect."

Von Mohl attempted a classification to account for all the various historical forms of the State. Thus he distinguished (1) patriarchal, (2) theocratic, (3) despotic, (4) classic or antique *e.g.* of Greece and Rome; (5) feudal and (6) Constitutional states. He also recognised a form which he called the military vassal state, and he subdivided classic states into monarchies, aristocracies and democracies.

But this classification too is unscientific and illogical. The states classified by him overlap each other and in all directions. For instance, the patriarchal state is at the same time monarchy. Moreover all States are despotic in the purely legal sense and all States are legal in the sense that they are source of law. C. Waitz classifies [illegible] Kingdoms, (4) Unitary [illegible] (6) Federal States, a[illegible] too is unscientific. In the first place, theocracy is not a true form of government. *In the second place, this classification is also* overlapping. D. Jellinek rejected all previous classifications of States as unscientific and confusing, and himself proposed a simpler classification, *viz.*, Monarchy and Republic-Monarchy, being a state in which sovereignty rests in a single person. Of course, he admits that there might be various types of monarchy. A Republic, he defines, as a state where the sovereign will rests in a group or college of persons, more or less, numerous. This classification, though simple is largely quantitative or arithmetical.

The classification of E. Garies is four-fold. In the first place, he talks of a non-responsible single person called monarch. This person either may be without constitutional limitations, as in the case of Czarist Russia or he may be constitutionally limited as in Great Britain. Secondly, there is a responsible single person: as for example, the President of the United States. Thirdly, there is a nonresponsible plural executive, as for example the Roman Collegiate. Fourthly, there is a responsible plural executive, as for example the Swiss Federal Council.

Burgess has given a most elaborate and a very logical classification of governments. He adopts four principles of classification. The first principle is the identity or the non-identity of the State with the Government. From this standpoint, Government is either Immediate or Representative. Immediate Government is that form in which the State exercises directly the function of the government. Representative Government is that form in which the State vests the power of government in an orga-

nization which is distinct. The second principle is the concentration or distribution of governmental powers. From this point-of view, governments can be classified as Centralized and Dual. Centralized Government is that form in which the State vests all governmental authority in a single organization. Dual Government is that form in which the State distributes the power of Government between two classes of organization which are so far independent of each other that the one cannot destroy the other or limit the powers of the other or encroach upon the sphere of the other as determined by the State in the Constitution. The third principle is the tenure of the persons holding office or mandate. On this basis, Government can be classified as hereditary or elective. The fourth principle is, the relation of the legislature to the Executive. From this standpoint, governments can be classified as Presidential or Parliamentary.[1] More or less on the same lines Giddings has classified Governments from the sociological standpoint and his classification is also a four-fold one. When a personal sovereign or a class governs directly, it is a rule by a minority of the population. This he calls, an Absolute Minority rule. Secondly, when a sovereign mass of the people rules by a majority it is called as Absolute Majority Rule. Thirdly, when a personal Sovereign or a group of aristocrats is limited by the people, it is called as Limited Minority Rule. And lastly, when the whole mass of the people prescribes certain limits to their powers, it is called Limited Majority Rule.[2]

But Moore classifies Governments from the standpoint of International Law. First, he broadly divides States into two categories. (1) Simple and (2) Composite. Then he further subdivides Simple States into two categories : (a) Single States and (b) Personal Unions. A single State is wholly separate and distinct from any other state. Personal Unions are States which, otherwise wholly separate and distinct have the same ruling prince. Composite States, he subdivides into three categories : (i) Real Unions : These are States which are not only ruled by the same prince but are also united for International purposes by an express agreement, (ii) Confederacies : These are states which associate themselves in a permanent manner for the exercise in common of their rights of sovereignty for the general advantage. But they retain their internal and to a greater or lesser extent, their external sovereignty; their personality in International Law is not destroyed. (iii) Federal Unions : These are states which are united under a Central Government which is supreme within its sphere and which possesses and exercises in external affairs, the powers of National Sovereignty. Thus Moore classified States from the point of view of their external relations.[3]

1 Burgess, *Political Science and Constitutional Law*, Vol. II, pp. 1-13.

2 Gidding's *Descriptive and Historical Sociology*, pp. 365-366.

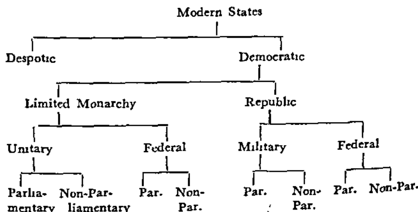
3 Moore, *International Law Digest*, Vol. I, pp. 21-27.

Conclusions

In more recent times, Governments have come to be classified from three points of view. In the first place, we classify States on the basis of the old principle, *viz.*, location of governmenttal power. If governmental power belongs to one man, it is Monarchy. If it belongs to a few, it is Aristocracy.[1] If it belongs to all, it is Democracy. If the monarch is unlimited, we call it Absolute Monarchy; if, on the other hand, the monarch is constitutionally limited, we call it Limited Monarchy. Similarly, if all the people directly participate in the governmental process, we call it Direct Democracy; if, on the contrary, all the peoqle participate in the governmental process indirectly, we call it Indirect or Representative Democracy.

The second principle is, the relationship of the Legislature and the Executive. Where the Executive is independent of the Legislature, both in tenure and powers it is a case of a Presidential Government. Broadly considered, a Presidential Government is based on the theory of Separation of Powers and the doctrine of Checks and Balances. If, on the contrary, the Executive and the Legislature are united together in the sense that the Executive depends upon the Legislature for its tenure and powers, we call it the Parliamentary Government. If, in a Parliamentary Government, or in a Presidential Government, the Head of the State is elected by the people, we call it a Republic. Thus it is quite possible for a Parliamentary Government to be Republican (as in the case of the Indian and the French Republics), quite as much as it is possible for a Presidential Government to be Republican (as in the case of the United States of America.)[2]

1 Compare the classification as given by Leacock *op. cit.*, p. 117.



2 '*Encyclopaedia Britannica*' XIVth Ed. 1929, S. V. "Republic". It says, inter alia, "In a Republic the supreme power rests in the people, or in officers elected by them....the head of the State is usually elected directly, and in modern usage, this fact distinguishes a Republic from a monarchy in which the Head is hereditary." According to Duguit, "When the head of the state

Our third principle is the source of supreme authority in a community. If in a state, the source of authority is one, we call it a Unitary State; if, on the contrary, the source of authority is more than one, we call it a Federal State.

In his recent work, Professor Soltau classifies Governments the basis of the relation of the Governmental power to public opinion as expressed in representative bodies. On this basis, he classifies Governments in four broad categories. (1) Parliamentary. Here the government of the day is dependent on the constant support of the elected assemblies; of these most are monarchies, *e.g.* Britain, Belgium *etc.* and a few are republics, *e.g.* France, Italy *etc.* (2) Direct. Here the Government of the day while elected by the people or by the assemblies, remains in office for a specific period irrespective of the support of the Parliaments, while being unable to act freely without it, *e.g.* the United States. (3) Dictatorial. Here the government, while elected in some popular way, and, therefore, claiming to represent a nation, remains independent of Parliamentary support, *e. g.* Spain, Portugal, Nazi Germany *etc.* (4) Absolute. Here the power is in the hand of an irresponsible monarch, usually hereditary, *e.g.* Saudi Arabia.[1]

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is hereditary, the Government is monarchical; otherwise, it is Republican. Contrast Duguit's opinion with the opinion expressed by Sir George Cornewall. 'Lewis' in his "Remarks on the Use and Abuse of some Political Terms" (1832; New Ed. 1898) p. 53. He says "When the whole sovereign power over a community belongs to one person, the government is called a monarchy; when it belongs to several, it is called a Republic or Commonwealth." Also see Madison's opinion in the 'Federalist' No. 39. He says that 'a Republican Government derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding office. . .during good behaviour.

1 Soltau, *op. cit.*, pp. 111-118. He says "We must not be deceived by the outward forms of a particular state : the old classification of monarchy, aristocracy and democracy have become practically meaningless, for they give no clue to the real purposes of the state. All governments have, in fact, elements of all three : monarchy,......aristocracy .....democracy. The same is true of other classifications, such as Monarchy as against Republic. The former may be much nearer the democratic ideal, for which the Republic is supposed to stand than the Republic itself. One must look beneath the surface......we shall fasten on essentials and not on outward forms; we shall not ask what the Head of the State is called, but how much personal discretionary powers he can exercise, if any; how much initiative he possesses in the selection of his ministers; how broad is the basis of the suffrage by which assemblies are elected (even democratic Switzerland still refuses vote to the women); how free are elections and whether Assemblies really represent Public Opinion;......what parts do favouritism, good birth and fitness for the job respectively play in the selection of officials......how impartial and prompt is the administration of daily justice......only when such questions are answered can we , then, assign, to that particular government its proper place and label it accordingly. He

MONARCHY

We may now consider the various principal types of government that emerge out in our discussion of the classification of Governments and analyse the development of various types of government, compare them, and assess their respective merits and demerits. Monarchy is the oldest form of government, because the earliest states were monarchical both in the East and the West. [illegible] Aristotle, too, believed [illegible] in virtue. The early Greek and German Kings claimed divine descent, held the crown generally by hereditary succession and were the heads of national assemblies, of the law courts and the Army.[1] In ancient Rome, the idea of divine descent was not strong and the succession was not hereditary; a king was appointed by his predecessor or by the regent with the help of the Senate and with the approval of the Gods. The Roman Monarchy was the first in history which showed a complete concentration of political authority with almost absolute administrative power.[2] In the imperial stage, though the Roman emperors were elected and were not

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adds, "Many of the questions raised, however, are not easy to answer, and to a great extent we have to be content with classifications according to outward ascertainable forms. But even then the size and freedom of the electorate and the extent of its influence over the selection and work of the government is more important than differences between monarchy and republic; while again the distinction between states based on 'socialism' and those based on 'private enterprise' is wearing pretty thin." Compare this opinion with the view expressed by Merriam in *Systematic Politics* (Chicago, 1945) Chap.V. page 179. He says, "In looking at forms of government, it is useful to consider (1) the ends of political society in general and the emphasis on particular societies; (2) the cohesive forces involved in the social composition of the particular state, the principle or type of association; (3) the instruments or tools used in the given stage of political society; and (4) the inter-relations of all these factors to one another, in the end product of a special form of political authority at a particular time and place. Thus we may consider :

Type of Association	*Social composition*	*Tools of action*	*End of State*
Family-clan unit	Labour	Violence	Security
Civic	Business	Custom	Order
Feudal	Agriculture	Symbolism	Justice
National	Science	Rational consent	
Federal	Religion	Strategy	Welfare
International	Other groups	Leadership	Freedom

Out of such materials as these, governments are formed and reformed in categories and combinations."

1 Greenidge, *Constitutional History of Greece*, Chapter III.

2 Homo, *Roman Political Institutions*, pp. 43-47.

hereditary, and though they were nominally appointed only for ten years, in reality they held office for whole lives and powers once conferred upon them were never withdrawn. The Roman emperors were given paternal control over the people for the benefit of the latter. The history of Rome proves how absolutism was neither good to the despots nor to those over whom they ruled.

After the decline of the Roman empire there arose the Frankish Monarchy. It arose out of a combination of German ideas of freedom and law with Roman conceptions of the power and supremacy of the State. The crown became more paternal in its relation to the people, and religion (Christianity) exercised a great influence over the state through the priests. But with the break-up of the Frankish Monarchy into small hereditary states the Feudal Monarchy sprang up. The king was regarded rather as the head of his vassals than of his people and the latter sank into secondary importance. All vassals swore fealty and homage to the king as being the source from which they received their land and authority. But gradually the great feudal vassals became practically independent lords and the unity of the State was broken. Thus a feudal state degenerated into a confederation of petty monarchs invested with absolute arbitrary powers within their domains.[1]

The royal prerogatives which were thus weakened by the growing independence of the vassals were still further reduced by the claims of the other privileged estates (clergy, nobility and citizens). But in the last three centuries of the feudal period a natural reaction set in. The arrogant claims of the nobility, their tyranny and disregard for the interests of the citizens sowed the seed of their own destruction. The citizens hated the lesser nobles more than they feared the king and hoped by weakening the powers of the former to secure a greater progress for their trade and manufactures. The king thus sandwitched between the people and the nobles, represented the awakening national spirit and regained that political power which had been previously lost. The revival of the study of Roman Law with the maxim that the will of the emperor is law was also conducive to this end and monarchy was re-established in a new and despotic form. This appeared first in France and Spain towards the end of the 15th and 16th centuries.

No sooner, however, was the new sovereign firmly established upon his newly decorated throne than the process of restrictions on behalf of the community began. Civil liberties, representative governments, and constitutional processes were invoked by the mass of the people, and the king became, little by little, as in England, a Constitutional sovereign without the arbitrary authority of earlier times (1688). Even in Bodin's theory of sovereignty, the sovereign was bound by the custom of the land and the laws of nature and of God. But absolutism was surely

1 Adams, *Civilization During the Middle Ages*, pp. 224-253.

whittled down in England until only a shadow of early authority remained. However, ceremonial and symbolic significance survived the loss of juristic and military power, and this remained as a basis for monarchy after the substance of authority had long been shorn away. In general, the principles of absolutism were rejected by the liberal philosophy of the 18th century which held the maxim that the king is not the proprietor of State. The French Revolution gave it a parting kick.

There remained one source of strength of the Monarchs in the 19th century and that was continuity based on hereditary succession. With breaks in the line, regencies and with incompetent holders of authority, even this advantage was gone.[1] In Japan alone did the ancient form of monarchy retain its earlier position of divinity, mystery and absolutism. But even there, forms of constitutional government began to spring up. Today the Emperor stands limited. Thus the general principles of limited monarchy are that the king is limited by people's consent which is expressed through popularly elected representatives. In short, the constitutional or limited monarch reigns but does not govern.

The latest form of one-man rule with its demand for absolutism and irresponsibility is seen in the newly risen dictatorships of Mussolini, Hitler and Franco. They abandon the tradition of heredity and of mystery which was always the characteristic of the traditional monarchs. They have been based upon the principle of leadership which provides for centralization of authority in one person and reverses the scale of authorities because here the power comes from the top down and not from the bottom up. This leadership principle is closely connected with the ideas of the omnipotence of the State and the glorification of the government by the few. In dictatorship the legislature remains formally, but for purposes of formal ratification of the will of the leader. Thus it is based on the irresponsibility of the governor to the governed. He is their interpreter but not their representative. He promotes their interests but not in accordance with their mandate or their power of review.

Thus seen Monarchy may be based on (1) family, (2) land, (3) military power, (4) Divine right or divinity, magic or mystery, (5) Combination of all these and (6) Leadership.[2] But we must not forget that monarchy rests upon the consent of some tolerably numerous group.[3] As the late Prof. Beni Prasad of the Allahabad University said : "Not even the most robust or the most gifted individual can impose his will on any large number of men for any length of time without their, at least, partial will-

1 Merriam, *op. cit.* p. 184. Thus modern kingship came to be characterized by the phrase "the king reigns but does not govern."

2 Merriam, *op cit.* p. 183. "Family, custom, military power, magic, divinity all these might be mingled in a somewhat indefinite but nevertheless powerful mixture of authoritatian elements."

3 Seeley, *Introduction to Pol. Science* (1896) p. 196.

ingness. He must base his power on the willing consent of some powerful group."[1] Thus an important base of monarchy is the existence of the government supporting body or group.

Now, about a century and a half ago, one man's rule was considered to be the best form of government. This was also the ideal of Plato and Aristotle. According to Hume absolute monarchy is a government under which "property is secure; industry is encouraged; the arts flourish; and the prince lives among his subjects like a father among his children."[2] Those who advocate absolute monarchy argue that absolute monarchy provides the elements of strength, simplicity of organization, ability to act quickly, unity of counsel, continuity and consistency of policy, and prestige in the conduct of foreign relations. It is stated that laws in an absolute monarchy are more easily enforced because the monarch has a free hand to select skilled officials, and he can, therefore, hold them to greater responsibility than is possible in a democracy, where they are popularly elected for definite terms and cannot be recalled or dismissed before the expiration of their term.[3] It is argued as Rousseau did, that monarchical government is more conducive to social justice as among the different classes of society for the reason that the monarch not being dependent upon popular election and being himself above all parties or classes, is likely to be impartial and even sympathetic toward the masses of his subjects.[4] It is suggested that monarchy did serve a very useful purpose in history and even now can serve a useful purpose. As Seeley points out "it is a contrivance for escaping a sort of government more oppressive still."[5]

But all the advantages claimed for absolute monarchy do not hold good. 'Power corrupts and absolute power corrupts absolutely.' A Government by absolute monarch may, therefore, be a government in which corruption may be rampant. Absolute monarchy eliminates the participation of the people in the government and thus it may never be effective. A Government

1 Prof. Beni Prasad's *History of Jahangir*, pp. 70-72. "A perfect absolutism capable of ruling or misruling everything under it, is a monstrosity unknown to nature and sober philosophy... .one can do everything with bayonets except sit on them."

2 H[illegible], *Essays*, No. 12, "Of Civil Liberty".

3 Hugh Taylor, *Origin of Government* (1919) pp. 91 et seq.

4 Rousseau *Contract Social*, *bk.* III, ch. 6 (Henry J. Tozer's trans. Third Edition.)

5 Seeley, *op. cit.*, pp. 169-171. Compare Sait, *op. cit.*, pp. 417-418. "Monarchy comes as a beneficent antidote to chaos or weak government.... Strong government is the medicine that nature prescribes in dealing with symptoms of disorder." Also refer to J. S. Mill's *On Liberty*, p. 22. "Despotism is a legitimate mode of government for dealing with barbarians, provided the end be their improvement and the means be justified by actually effecting that end."

to be effective must be broad-based. Absolute monarchy based on the military power of the ruler will not be dynamic. It will decline as soon as the personal power of the ruler declines. Despotic monarchy will be good *if a succession of good despots could* be ensured. History affords numerous examples of immature, feeble-minded, and incompetent rulers succeeding to the throne. France, for example, was governed for more than 500 years by kings who had not reached the age of 25 years at the time of their accession, and for nearly 100 years by kings who had not attained the age of 21. *History tells us, again, that even if the kings are* capable, very few had defended the interests of the masses.[1]

As for the question of Limited Monarchy, here it is not so much the question of advantages or disadvantages of Monarchy as of evaluating the limits upon him. That is, when we discuss the Limited Monarchy, we are discussing the merits of a titular head. A titular head has symbolism, ceremonialism, ornamentalism. He is above party-strife and is an umpire in the game of party politics. He receives the reverence of all, he is the head of society, and gives a cohesive force to the community. His office is continuous and, therefore, enables him to accumulate experience and knowledge. A limited monarch is thus always an asset to a society. But sometimes it is contended that even a titular king might serve as a weapon in the armoury of the big business and vested interests; that there is always a certain secrecy about his movements; that his connections are always conservative and that, therefore, it is doubtful if he is an umpire in the game of the party politics.

ARISTOCRACIES AND OLIGARCHIES

Both aristocracy and oligarcny mean government by a few; that is, by a minority or relatively small number. According to Aristotle, as we have seen, oligarchy was the perverted form of aristocracy,[2] *i.e. it is government by the few in their own interests.* Some writers have distinguished aristocracy from oligarchy by saying that the former is a government by a class whereas the latter is a government by a small number of persons who do not, strictly speaking, constitute a class.[3]

Thus Aristocracy is a form of government in which only a relatively small proportion of the citizens have a voice in the choosing of public officials and in determining public policies. The

1 Refer to J. S. Mill's, *Representative Government* (Everyman's) Ch. 3, pp. 202-218. Goodnow's, *Comparative Administrative Law* Vol. II p. 10; F.A. Wood's *The Influence of Monarchs* pp. 70-91. Farrer's, *The Monarchy in Politics* (1917) pp. 320-333.

2 Seeley *Introduction to Pol. Science* Sect. VI. He says that oligarchy is a deranged or diseased form of aristocracy.

3 Predier Fodere *op. cit.*, p. 241. Also refer to Belloc's *The House, of Commons and Monarchy*(1920) p. 13 and Treitschke's, *Politics* (2 Vols, 1916) Vol. II pp. 228-229.

ancient Greeks believed in government by "Ariste" which meant "excellence". Thus to them aristocracy was the government by the excellent. Now this may mean excellence in education, experience, moral character, social status, economic position and so forth. Jellinek recognised two general types of aristocracies : first, those in which the ruling class was entirely separated from the rest of the population so that it was impossible for an individual who did not belong to the ruling class to gain admission to it; second, those in which nothing could prevent a member of an inferior class from getting political privileges reserved for the dominant class. The former were hereditary aristocracies, the latter were based upon wealth, education, social prominence *etc.*[1] Rousseau classified aristocracies as (1) Natural, (2) Elective, and (3) hereditary. By a natural aristocracy he meant a government by those who by their natural ability as leaders are best qualified to govern. Hereditary aristocracy is based on hereditary succession. Elective aristocracy is a government by the relatively few who are chosen by the whole mass.[2] But all aristocracies are characterized by, as Bluntschli puts it, by (a) pomp and dignity to impress upon the people, (b) tendency towards harsh dealing with the geneal body of the citizens; (c) extreme conservatism and attachment to the principles of hereditary right; and (d) devotion to land." Similarly, the late Prof. Beni Prasad said : "An aristocracy generally rests on the combination of superior birth with wealth, education, fighting capacity or political experience.'[3] Thus aristocracies may be based on birth, age, military powers, property, race, cultural attainments and religion.

Aristocracy has been defended on various grounds. It emphasises quality rather than quantity, character rather than mere numbers. It attaches great weight to experience and training as political virtues and seeks to reward special talent and attract it into the public service. Associated with monarchy and democracy, it acts as a tempering and restraining element. It curbs the passions of democracy and holds in check the absolute tendencies of monarchies.[4] Thus it avoids rash political experiments and advances only by cautious and measured steps. Considered

1 Jellinek, *op. cit.*, vol. II, pp. 488.

2 *The Social Contract*, bk. III, ch. 5.

3 Prof. Beni Prasad, *op. cit.*, p. 69. Also refer to Merriam, *op. cit.*, pp. 187-188.

4 Thus Lord Brougham in Works Vol. XI, p. 20 says "Nothing else can protect liberty from an arbitrary sovereign or from the more insupportable tyranny of the irresponsible multitude." Also refer to Montesquieu's Espvit des lois bk III ch. 4 (Thomas Nugent trans. New Edition, revised by J. V. Pritchard. Two volumes. London, 1878. Bohn's Standard Library); He says that the spirit of 'aristocracy is "moderation founded on virtue." Garner. *op. cit.*, p. 381 quotes Napoleon as saying that "aristocracy was the sole support of monarchy, its lever, its resisting point, that a state without it is a vessel without a rudder, a balloon in the air."

from the point of view of the quality of government, it provides for strength and efficiency missing in a democracy.[1] It has been said about hereditary aristocracy that heredity and environment go a long way in the cultivation of virtues for government—thus a son of a statesman will learn statesmanship from his very childhood.[2] It is also suggested that aristocracy in some form is a principle which all states have admitted and to some extent followed in practice. Thus De Tocqueville said "almost all the nations which have exercised a powerful influence upon the destinies of the world by conceiving, following up, and executing vast designs—from Rome to England—have been governed by aristocratic institutions."[3] Lord Bryce has elaborated this concept. He says "No one can have had some year's experience of the conduct of affairs in a legislature or an administration without observing how extremely small is the number of persons by whom the world is governed. In all assemblies and groups and organized bodies of men, from a nation down to the committee of a club, direction and decisions rest in the hands of a small percentage, less and less in proportion to the larger and larger size of the body, till in a great population it becomes an infinitesimally small proportion of the whole number. This is and always has been true of all forms of government, though in different degrees"[4]

But aristocracy has to work within limitations. All aristocracies work upon 3 assumptions which are not always correct. The first assumption is that there are well-defined differences in the political capacity of individuals and that these differences may be identified and validated. We do not know what these political differences are and how can they be recognised.[5] Closely related to the first assumption is the second that the superior types may be selected and continuity obtained by some adequate procedure or methods and that this selected leadership will be recognised by the community widely enough to ensure the maintenance of security and equilibrium. Now we do not know those methods. How can we select the superior type ? The third assumption is that the superiors thus selected will accept responsibility to govern for the good of the community. We do not know how this will happen. The superiors may be irresponsible themselves, if so, their responsibility may be "irresponsi-

1 Compare J. S. Mill's *Rep. Government, op. cit.*, pp. 220-221. "The governments which have been remarkable in history for sustained mental ability and rigor in the conduct of affairs have generally been aristocracies"

2 Compare Sir Henry Maine's, *Popular Government*, p. 188 and Seeley *op. cit.*, Sect. VI.

3 De Tocqueville, *Democracy in America*, Vol. I, p. 256.

4 Lord Bryce, *Modern Democracies* (2 vols. 1929) Vol. II, Ch. LXXV. pp. 594-595. Also refer to Mallock's *The Limits of Pure Democracy*. Ch. 4.

5 See Michael B. Foster's, *The Political Philosophies of Plato and Hegel* (1935) Chap. i. on difficulties which Plato encountered on this point. For a detailed discussion refer to Merriam, *op. cit.*, pp. 187-198.

ble responsibility", which is a contradiction in terms.[1] In short the curse of aristocracy is not that great men fill great places but that small men fill great places and put on their inferiority with arrogance.

PRINCIPLES OF DEMOCRATIC GOVERNMENT

Let us now turn to discussion of Democracy in its manifold aspects—its definition and meaning, bases and requisites, its history and its postulates, its merits and demerits and its various types. The terms "democracy" and "democratic" have been used so often and so differently that they are like coins on which all inscriptions and designs have become effaced, with the result that they can be made to apply to anything one wishes to defend or to attack according to one's preferences.[2] It has been variously conceived as a form of Government, of State, of Society and has been treated as a spiritual concept.[3] Still others make a distinction between social, economic and political democracy and argue that the three things do not necessarily coincide in a given state.[4] Thus Attlee and Churchill, Roosevelt and Truman, Lenin and Stalin, Hitler and Mussolini all call themselves Democrats.

Etymologically the word "democracy" means government by the people. It was so understood by the Greeks.[5] In modern times Sir Henry Maine defined Democracy as "a particular form of government. . . . It is simply and solely a form of government."[6] Similarly J. R. Lowell said "Democracy is no-

1 Thus Aristocracies are embarrassed by three "uncertainties" (1) Uncertainty as to the precise characteristics of the aristocrats, or of any working group of them. (2) Uncertainty as to the selection and continuity of the superior ones. If we know that we belong to the aristocracy how can we be sure that others recognise our natural pre-eminence? If birth or status is abandoned, and if elections are repudiated as ineffective, the labelling of the aristocrat is made difficult. Who, then, shall choose the few and the successors of the new? (3) Uncertainty as to the nature and administration of the trusteeship of the aristocracy—shall the aristocracy hold their trust to be that of the development of the whole community over which they preside? See Merriam *op. cit.* pp. 196-197. Also refer to Huxley's *Crome yellow* (1922) pp. 228-229.

2 Soltau, *op. cit.* pp. 158-159. Thus he says that "a republic is more democratic than a hereditary monarchy, though a President may be more powerful than a King. It is "democratic" to have the broadest suffrage possible, yet Switzerland, universally acknowledged as one of the most democratic States in the world, has no women's suffrage yet, while France, another democracy, only introduced it very recently. . . ."

3 See for instance Hearnshaw's, *Democracy at the Crossways,* Ch. 1, pp. 11-35.

4 Refer to Willey's Recent Critics and Exponents of the Theory of Democracy in Merriam, Barnes and others, *Political Theories, Recent Times.*

5 Aristotle's *Politics* bk. III, Sec. 8 (Newman's translation).

6 Maine, *Popular Government,* p. 59.

thing more than an experiment in government."[1] Lincoln in his famous Gettysburg speech of 1863 said that Democracy means government of the people, by the people and for the people.[2] Prof. Seeley defined it as "a government in which every one has a share"[3] Dicey defined it as a form of government in which "the governing body is a comparatively large fraction of the entire nation."[4] Lord Bryce said "the word democracy has been used ever since the time of Herodotus to denote that form of government in which the ruling power of a state is largely vested, not in any particular class or classes but in the members of the community as a whole."[5] Cecil Chesterton defined democracy as a government which is in accord with the general will of the governed."[6]

But there are others who believe that Democracy is more than a form of Government. As Hearnshaw says "Democracy is not merely a form of government ...It is at least two other things both of them logically anterior to, and practically more important, than, that : it is a form of State and it is also a form of society."[7] Similarly MacCunn says "Democratic government is not the whole of democracy. It is but one, and among the latter of its forms. For when democracy at last makes its way into the political constitution it is only because it has, it may be for long, existed elsewhere.[8] To Paul Kester it is another form of Christianity, a perfect and complete philosophy of life, even more than it is a theory of government.[9] According to Ralph Adams Cram "true democracy means 3 things, abolition of privilege, equal opportunity for all; utilization of ability."[10] Barnes says that Democracy also implies a type of society.[11] To Ellwood democracy

1 Lowell's, *Democracy*, p. 20.

2 Charnwood's, *Abraham Lincoln*, p. 361.

3 Seeley, *op. cit.*, p. 324

4 Dicey, *Law and Opinion in England*, p. 52. Also refer to Spencer's *Social Statics*, p. 103.

5 Bryce's, *Modern Democracies* Vol. I (1929) p. 23. Also refer to Hobhouse's, *Democracy and Reaction*, pp. 148-50 and May's, *Democracy in Europe* p. vii. Compare Sidgwick *Elements of Politics* 2nd ed. p. 610 and Austin's *Jurisprudence*, p. 239.

6 Chesterton, *The Great State*, p. 13.

7 Hearnshaw, *op. cit.*, p. 12.

8 Maccunn, *Six radical Thinkers*, p. 197. Also refer to Dewey's, *Ethics of Democracy* p. 18. He says : "To say that democracy is only a form of government is like saying that home is more or less geometrical arrangement of bricks and mortar, or that a Church is a building with pew, pulpit and spire." Also compare, Barker's, *Political Thought from* 1848 *to* 1914, pp. 168-169.

9 Kester, *Conservative Democracy*, 1919, p. 1.

10 Cram, *The Nemesis of Mediocrity* (1919), p. 3.

11 Barnes, *Sociology and Pol. Theory* (1924), p. 4.

is a form of social control—a social spirit.[1] Miss Follet conceives democracy as a spiritual ideal.[2]

Thus the definitions of Democracy are diverse. Its meanings are very wide. From one point of view it means a form of government. As a form of government Democracy means a government in which the community as a whole, directly or indirectly performs the functions of sovereignty, a government which believes more in the talking shop than in the concentration camp; a government by political parties; a government based on free discussion. In the second place, Democracy sometimes is also taken to mean a form of State. Hearnshaw defines a democratic State as one "in which the community as a whole possesses sovereign authority, maintains ultimate control over affairs, and determines what sort of governmental machinery shall be set up.[3] But Democracy is a form of society. As a form of society, Democracy means a Society based on social equality and absence of social distinctions; it means a society in which the spirit of equality is strong and secondly where fundamental human equality is realised through equality in legal rights, social conditions and economic opportunity.[4] Thus it is possible that in a society which is not democratic there may be a government which may be regarded as democratic, *e.g.*, in England and America. In England, for instance, there are wide economic and social distinctions and, therefore, although the government is democratic, society is not democratic.[5] Equality of opportunity does not exist, ability is not always the qualification for ascent to the highest places in the State, there was, until recently, very little equality in educational opportunity.[6] Thus as a form of society Democracy will seek to eliminate all social and economic exploitation. It is from this point of view that Russia and China may be said to be democratic. Though the Russian and the Chinese Governments are totalitarian and are one-party States, yet the Russian and the Chinese Societies are democratic in as much as

1 C. A. Ellwood, "Education for citizenship in a Democercy". *Am. Jour. Sociology*, Vol. 26, pp. 73ff.

2 M. P. Follet's, *The New State*, (Fourth Impression 1923) Ch. XIX pp. 156-158. She says "Democracy is the rule of an inter-acting interpermeating whole. . .Democracy is the fullest possible acceptance of the single life... Democracy is not a spreading out : it is not the extension of the suffrage."

3 Hearnshaw, *op. cit.*, p. 17.

4 Crozier, *Civilization and Progress*, p. 7 and Dicey, *Law and Opinion in England*, p. 50.

5 H. J. Laski, *Parliamentary Government in England* (1945) Introductory pp. 38-42. He says "The British Constitution. . . .is the expression of a politically democratic government, it is not the expression of a democratic society.

6 *Ibid*. But there have been writers who have condemned equality. John MacCunn calls equality "a monstrous fiction." Bentham calls it "an anarchic fallacy". Coleridge described it as "an indefensible proposition" and Carlyle characterized it as a "palpable incredibility and delirious absurdity."

economic exploitation has been eliminated.[1] Thus we make a distinction between political and social Democracies.

Democracy also means a certain attitude towards life, a democratic temper. In this sense Democracy means adjustment, accommodation, toleration, respect for the opponent's view point, respect for human personality and individuality. Even Lenin says "Democracy is of great importance for the working class in its struggle for freedom against the capitalists. It gives the best conditions for the development of worker's fight for emancipation."[2] Finally Democracy has been viewed as a spiritual force, as a vision, as a religious principle. *Mazzini*, for instance, said that Democratic movements were pre-eminently of religious character.[3] Similarly Kant exulted that man is an end unto himself. Miss Follet says that Democracy is not a spreading out... it is a drawing together. . . . Democracy is a great spiritual force evolving itself from men, utilizing each, completing his incompleteness by weaving together all in the many-membered community life which is the true Theophany.[4]

In this view there is the danger of looking upon the State as an entity, an organism apart from those who compose it, a creature to which they owe unquestioning allegiance and which may dispose them of at its own inscrutable pleasure. It is so simple and yet so risky for a nation to veil itself behind the fiction of a common will which it may be extremely difficult, even impossible, to determine. Just where does that will reside? How is it made manifest? Referendum may not be any guide for men often answer for reasons often quite alien to the issue. They are impelled by somethig elusive, which they half realize.. They seldom have anything like an opinion. Their leaders are guided by their interests and they follow just because they are used to follow. Elections do not reflect this common will either. The mechanisms of election are complicated, its process is even vulgar, and the results are half-cooked mutton. A dictator who is ambitious, clever and determined can scuttle democracy by democratic methods, and kill law by the supreme method of legality. Once this is done, the paralyzing terror of revolution is on, and then man feels all the 24 hours the pervasive foreboding of violence and of armed suppression. But in a 'democratic society there can be revolution without machine guns and men may quit a public office and retain a private life.

[1] Justin Little John, *"China and Communism" International Affairs*, Vol. XXVII No. 2. April 1951. Lenin described Democracy in Capitalistic society as "Democracy that is curtailed, poor, and false". See "Why I am a Democrat ?" A symposium Edited by Richard Acland, M.P. (1945), p. 125.

[2] *Ibid.*, p. 125.

[3] Mazzini, *Thoughts on Democracy* edited by E. A. Venturi, p. 174.

[4] Miss Follet, *op. cit.*, pp. 156-161.

ment of the old, while in Protestant countries Catholicism also was driven to such a defence of disobedience. Protestantism not only defended the right of the individual conscience to differ from the state religion, it also led to freedom of discussion and toleration. But the principles of democracy enunciated by the Reformation movement were the principles of political democracy which may and often does, involve negation of economic democracy. In fact there was an economic necessity of the Reformation. In Europe a new class of merchants was rising—the middle class. This new class wanted economic prosperity and more land. Catholicism was opposed to wealth; it condemned usury. And the Catholic church was in possession of the best land. A struggle, therefore, became inevitable with the catholic church. To build up Capitalism or Capitalist Democracy a religious revolution was necessary.[1] Hence the Reformation.

This capitalist democracy was reinforced by four revolutions of modern times. The first was the English Revolution by which the Stuart absolutism was brought to an end and foundations were laid of the supremacy of the Parliament. The second was the American Revolution by which the 13 colonies of America drew up a federal constitution incorporating the individualistic philosophy of Montesquieu and Locke. The third was the French Revolution emphasising the notions of Liberty and Fraternity and releasing the forces of nationalism and self-determination. The fourth was the Industrial Revolution which built up the whole structure of modern capitalism and extended the frontiers of political democracy.

In more recent times a serious challenge came to the concept of political democracy which was based on exploitation and expropriation—the challenge of communism. In Russia the first blow was struck in 1917 and by 1920 the Bolshevik Revolution was complete. Communism with its emphasis on nationalization of industries and collectivization of farming challenged the tenets of political democracy. Against this progressive force came to be pitted the reactionary forces of Fascism in Italy and Nazism in Germany.[2] After 1949 China also adopted the princi-

1 John Strachey, *Coming Struggle For Power*, pp. 14-19. "For what after all is Protestantism but the free market in God ? What are Liberty of conscience, and the principle of Justification by the unaided Faith of the individual but claims that every man may go and fetch down God's mercy from on high, if he can, for himself?Protestantism is theological private enterprise. Thus the original monopoly, the great double monopoly of the Roman Church over the best available land and over men's spirits, was broken."

2 C.E. M. Joad, *Guide To The Philosophy of Morals and Politics* (London)1940 pp. 668-690. "In those countries in which the pinch of economic hardship has been most severely felt capitalism has not hesitated to reveal the contempt which it has always entertained for liberal shibboleths by destroying democracy, suppressing liberty and establishing upon their ruins reaction open and unashamed. In other words, the capitalism driven into an economic corner turns

ples of collectivization and nationalization. In fact, at the end of the second world war, the democratic movement in alliance with nationalism and socialism took rapid strides. Throughout the under-developed areas there has been a tremendous mass upsurge since 1945. While in the West, political democracy had been preceded by formation of capital and economic growth and consolidation which could be harnessed for answering the demands formulated by the people holding the right to vote, in Asia and Africa the process was reversed. Here, political freedom and rights preceded economic development. The people got the right to vote by one stroke of pen. With this right, power was diffused and the masses at least learnt to formulate their demands which the governments had not the means, even if they had the will, to meet. Thus there came about a wide gap, becoming wider every day, between the poeple and their rulers. On the one hand, people were adopting democratic Constitutions, on the other they were thoroughly dissatisfied with the results and on the wave of discontent in very many countries democracy was scuttled. "Controlled democracy" has been established in Indonesia and "Basic Democracy" in Pakistan 1956-58. In Burma, the Commander-in-chief was asked to take over in 1958. In Ceylon following the assassination of the Prime Minister Bandaranaike in 1959, there has been growing instability. In Japan democracy is under fire and the cult of assassination is spreading. Throughout the Middle East democracy stands subverted. In Egypt political parties are banned. In Turkey Celal Bayar and Adnan Menderes, the President and the Prime Minister were ousted in 1959 by the Army; put on trial and executed. In Iraq, the revolution took over in 1958 and in Iran the people refused to allow the results of the parliamentary elections held in August 1960 to stand because those elections had been "rigged". In Nepal King Mahendra dismissed and arrested the entire Cabinet in December 1960 and abrogated the Constitution. In South Africa a tiny white minority ruthlessly carries on the apartheid policy and subjects the vast majority to a regime which represents prostitution of democracy. Even in Europe there have been setbacks. The people of France invited General De Gaulle to be their virtual dictator in 1958.

(Continued from the previous page).

fascist and fascism may, therefore, be regarded as the last phase of capitalism. Even in the more prosperous capitalist countries, the limit of the concession which political liberty can be used to secure has already been reached. The passing of the Incitement to Disaffection Act in England is regarded as a significant frontier showing that the tide of political liberty is even in England already on the ebb. Those who care for political liberty and wish it to be preserved are, therefore, contending for something which, from the point of view of the depressed classes, a shadow from which what substance it ever possessed has departed." Also compare Laski's, *Democracy in Crisis*, Chapters 2 and 4.

THE POSTULATES OF DEMOCRACY

We are now in a position to deduce the principles of Democracy. First, the individual citizen is an end in himself and the State is a means and only a means to his well-being. Secondly, the purpose of the State is to do those things which the individual requires to be done, if he is to live a full and satisfying life, yet cannot do for himself, to build in a word a society in which the individual can develop his personality and realize all that he has it in him to be. *It is by their success in fulfilling this purpose that* states are to be judged.[1] Thirdly, since it is only the wearer who knows where the shoe pinches, the individual citizens should through their chosen representative, decide what laws should be made and how the community should be run. Fourthly, changes in government should be by consent and not by violence and should take place *within the Constitution in accordance with the procedure* which the Constitution provides. Fifth, the individuals should be free to think and say and read and write what they please and, in particular, they should be free to criticize the government and to form parties which are opposed to the government and openly to offer themselves as an alternative government. Then, there should be separation of powers, Habeas Corpus and rule of law.[2] Nor can we ignore the all important factor of economic minimum. What good is freedom to a starv-

1 C. E. M. Joad's, *The Principles of Parliamentary Democracy* (Forum Books). The Falcon Press, London (1949), pp. 7-8.

2 Compare Soltau, *op. cit.*, pp. 161-162. He recounts 4 implications of Democracy. (1) the principle that "uniformity of belief and action is neither necessary nor desirable"; (2) rejection of any "absolute" in political theory or practice. It is an admission of relativity in politics; (3) the principle that political rights must be the same for all, irrespective of birth, or wealth, or even education; (4) belief in methods of peaceful persuasion, in the ultimate reasonableness of man, and his response to rational argument. Also refer to C E. Merriam, *op. cit.*, pp. 199-200. He says that the principal basis of democracy are "(1) the essential dignity of man, the importance of protecting and cultivating his personality on a fraternal rather than a differential principle and the elimination of special privileges based upon unwarranted or exaggerated emphasis on the human differentials; (2) Confidence in the perfectibility of mankind; (3) The assumption that the gains of commonwealths are essentially mass gains and should be diffused as promptly as possible throughout the community, without too great delay or too wide a spread in differentials; (4) The desirability of popular decision in last analysis on basic questions of social directions and policy and of recognised procedures for the expression of such decisions, and their validation in policy; (5) Confidence in the possibility of conscious social change accomplished through the process of consent rather than by the methods of violence. See Hearnshaw *op. cit.*, p. 39 ff. He says that the first Postulate of Democracy is "The Fundamental Honesty of Men in general." "Second Postulate, *Practical Commonsense of Men in general.*" "*Third Postulate, the solidarity* of the community." "Fourth Postulate, The Existence of a general Will." Refer to H. Sidgwick, *The Elements of Politics*, pp. 582-587.

ing man? He "cannot eat freedom or drink it."[1] It is essential for any life worth living that the citizen must be guaranteed whether in health, sickness or old age, an income to enable him to live a reasonable life, and to bring up his family in a decent house and to give him adequate leisure. Large accumulations by a minority may result and do result in controlling and spoiling of political democracy.[2]

If Democracy is to be conceived as a government based on consent, a government of all, then it follows that it can be worked out only in a community where the general people possess a relatively high degree of political intelligence, an abiding interest in public affairs, a keen sense of public responsibility and a readiness to accept and abide by the decisions of the majority. The majority in turn must be willing to recognise that strong minorities have rights which are entitled to respect and cannot be disregarded without violating one of the fundamental principles of popular government. Indifference starves a democracy. High education and a free Press are other indispensable conditions.[3] Thus respect for human personality and principles, an intelligence elevated by honour and purified by sympathy, a high sense of duty, a high standard for honesty, a spirit of compromise and adjustment, a capacity of vigilance—these are requisites of Democracy. A free, fearless and impartial judiciary, autonomous Universities, a fair standard of living, a fair measure of leisure healthy opposition, non-partisan civil service and army, an active system of local government are essential for its growth.[4]

1 Hobson, *Constructive Democracy*, pp. 21-22

2 *Ibid.*, p. 23.

3 Lord Bryce, *op. cit.* vol I, Chapters VIII and X, pp. 79 and 104 and ff. He says "Modern democratic theory rests on two doctrines as its two sustaining pillars: that the gift of the suffrage creates the will to use it, and that the gift of knowledge creates the capacity to use the suffrage aright... the more educated a democracy is, the better will its government be,"p.79; "It is the newspaper press that has made democracy possible in large countries", p. 104.

4 Compare J.W. Burgess, *Political Science and Constitutional Law*, vol. I, pp. 81-82. He argues that only a national state is capable of being Democratic. He says that the social conditions "which precede and make possible the existence of the democratic state.... may be expressed in a single phrase, viz., natioal harmony. There can be no democratic state unless the mass of the population of a given state shall have attained a consensus of opinion in reference to rights and wrongs, in reference to government and liberty. This implies, in the first place, that they shall understand each other; i.e, that they shall have a common language and a common psychologic standpoint and habit. It implies, in the second place, that they shall have a common interest in greater or less degree, over against the population of other states. It implies, finally, that they shall have risen, in their mental development, to the consciousness of the state, in its essence, means and purposes; that is, the democratic state must be a national state, and the state whose population has become truly national will inevitably become democratic." Also refer to Norman Angell, *The Public Mind* (1927), Chapter I.

PEOPLE S DEMOCRACY

It is true that liberty and equality are difficult to reconcile and that if you insist on a decent standard of living for the masses they may have to pay the price in terms of their civil liberties. Rule of Law, it is suggested, is not compatible with equalitarianism. After 1945, in Eastern Europe there developed what is called "People's Democracy", or what Barbara Ward called Eastern Democracy which is in its political manifestations almost at the contrary pole to Western Democracy. The four features of political and social life in the West—the independence of the law, *parliamentary government based on more than one party and* incorporating an opposition, the separation of state and community and the e: voluntary activities, and last of all, rivacy and freedom —these features and other People's Republics by the complete unity of state and community in every aspect of political, economic and social life. The point of departure is that Russia (or Albania or Yugoslavia) is a State committed to a certain view of life—the communist view; every activity of the community is subordinate to the task of realizing the Communist pattern.

Now in a People's Democracy, the judiciary is supposed to be an organ to mete out "socialist justice" and the penal system is directly controlled by the political arm of the government. Criticism there exists, but it is "creative" or "constructive" criticism and must always lie within the framework of the party programme. For instance, in regard to planning you can condemn the incompetence of officials, inefficiency of managers, slackness of workers and misappropriation of supplies, but no criticism of the plans is possible. Similarly elections are held but the choice by the people is very limited. All undertakings and organizations are controlled by the State (or rather the party). All cultural bodies and youth clubs are adjuncts of the party. The trade Unions which in the Western type of democracy constitute one of the most striking examples of independent organization is in a People's Democracy, "an organ of government, alongside other organs, and exists to convey the State's wishes and directions to the workers, to stimulate their efforts and in return to bring their wishes to the government's attention." The Army as well as the Church are integrated with the Party and the State. The Communist policy in People's Democracies has aimed at breaking down the influence of the Church by taking over the schools and by discrediting, arresting and imprisoning Church leaders if there is any doubt about their loyalty to the state above all else. The temper of society is at once intolerant but dynamic. The Communist Party is the pivot of the State.

Thus the concept of People's Democracies as evolved in Eastern Europe is in sharp contrast with the kind of democracy with

which the world was hitherto familiar. It does not lay stress on the formal rights and freedoms known to the individual in the West, and it does not rest on the basis of multi-party system in which one party rules and the other (or a coalition of others) opposes. On the other hand, it rests on socialist ownership of the means of propaganda and means of production. It distinguishes a "friendly opposition" (which consists in pointing out mistakes but which does not oppose the fundamentals and the basic principles of State organization) from "a hostile opposition" (which consists in basic criticisms intended to secure the overthrow of the regime), and while the former may be tolerated, the latter is promptly liquidated. In the earlier stages it looked a happy blend of parliamentary democracy combined with a gradual levelling up in the economic and social spheres, effected through the redistribution of land and a step-by-step nationalization of the key industries. The Governments (consisting of Liberals, Agrarians, Social Democrats, and Communists) were Popular Front Governments, similar to those established in Belgium, France and Italy at the end of the war, with the difference that whereas in the West, the Communists never succeeded in obtaining the Ministries of War and Home Security, in the East they always insisted on filling those posts with their own followers. In fact, prior to 1948 the notion of "national exclusiveness" was fostered and it was widely believed that each country would be allowed to evolve towards socialism in its own particular way, suited to local conditions and requirements. In the autumn of 1948, however, shortly after the Soviet rupture with Yugoslavia, the emphasis shifted. At the beginning of 1949, Dimitrov and Bierut described the People's Democracies as transitory stages on the road to socialism, the ultimate goal of which is identical with that of the Soviet Union. Later, Rakosi defined a People's Democracy "as the dictatorship of the proletariat without the Soviet form (i.e. without Soviets)". The establishment of the Cominform had brought the Soviet Union and East European states closer. The example of the Soviet Union was followed because the road of the People's Democracies differed only in certain formal aspects, not in essentials, from that of the Soviet Union. It was now freely argued that the pattern of development in the People's Democracies could not vary from that of the Soviet Union, that the preservation of differences would constitute "dangerous dogmatism and criminal stupidity leading to the denial and overturn of the very substance of people's democracy and restoration of capitalism", and that "even greater utilization of Soviet experiences and thus even closer approximation to the Soviet example was one of the main laws of development of the People's Democracies."

This doctrine reigned supreme from 1948 to 1953 until Stalin died and it was under this doctrine that "grave errors" were made by the Soviet Union. National individuality was stultified, traditional values were extirpated, and the superiority of the Soviet values and of the "Sovietman" was extolled. Production of

consumer goods was sacrificed for the sake of the industrial and military power requirements of the "bloc". As Paul Zinner has put it, the forced pace of industrialization, with emphasis on producer's goods, in conjunction with the other burdens of "socialist transformation" imposed hardships not only on the peoples but also on the local communist parties, whose capacities to cope with the manifold tasks for which they were responsible were heavily overloaded. The Soviet Government itself admitted some of these mistakes after the death of Stalin. Witness a remarkable passage in the statement of the Soviet Government on the "Foundations of the Development and Further Strengthening of Friendship and Co-operation between the Soviet Union and other Socialist States" issued on October 30, 1956 : "In the process of building up the new system and the deep-going revolutionary transformation of social relations there were many difficulties, unfulfilled tasks and outright mistakes, including those in the mutual relations between the socialist countries, violation and mistakes which belittled the principle of equal rights in the relations between the socialist states." After the death of Stalin, therefore, the Soviet relations with the East European States were given a new direction and the concept of People's Democracy had to be modified here and there.

Now it may be asked why we should call this system a "democracy" at all when there is neither freedom nor responsible self-government. According to the Communists, this system represents the only genuine form of democracy, for here private profit and exploitation have disappeared and priorities of production are established according to the States' calculation of need. The instability of the trade cycle has also vanished. Similarly, in the social sphere all discrimination has been eliminated. In education, no differences of class prevent Soviet citizens from securing the best education the country can offer. Women have been completely emancipated. Here there are no colour bars, [illegible] race or nationality. But it cannot [illegible] been terror, violence, concentration [illegible] police, and arbitrary arrests. There has been almost a total suppression of political freedom until Khruschev embarked on new experiments after 1958. Can we, then, think of a system of democracy which, while ensuring economic equality, better standards of living, social security, can also guarantee the dignity of the individual and Civil liberties ? This can be done and is being done in some states. After all Communist or Peoples' Democracy and capitalist or Western type of Democracy do not exhaust all the possibilities of economic and [illegible] of Democracy where we can [illegible] with economic planning and [illegible] which is being tried in states such as Great Britain, India and Sweden.

THE WELFARE STATE

A welfare state is organized and planned with a view to en-

suring the welfare of society as a whole of which the welfare of the individual is a necessary part. With the rise of more democratic governments, the extension of the suffrage to the industrial workers, the spread of public education, the enactment of regulatory and welfare legislation, protecting labour against many forms of exploitation, and the emergence of a more humane and enlightened attitude among the employers themselves, the negative aspects of 19th century capitalism were transformed. The concept of a positive state was generally accepted. Freedom was no longer viewed as absence of restraint quite as much as beauty is no mere absence of ugliness. Freedom was now viewed as the existence of those social and economic conditions in which alone life is worth living. The concept of a welfare state lays stress on the sanctity of the personality of the individual and on the humanistic idea of happiness. The evils of free competition and private enterprise were sought to be eliminated through planning and state control. Through collective effort of the people obstacles to good life are removed but this collectivism is not inimical to basic freedom, equality and tolerance. The theorists of welfare state visualize comprehensive functions of state which is not to act merely as a Policeman. The end of the state is conceived in terms of social welfare and elimination of privilege. Wealth is redistributed so that capital may not accumulate in private hands, for, nothing threatens the individual right to property so much as the big monopolies. Economy has thus to be mixed and the private sector is to be balanced with the public sector quite as much as state control has to be adjusted with private initiative. In a welfare state every member of the community is entitled just because he is a human being, to a minimum standard of living. Full employment at the top of social goals is, therefore, to be supported by public policy. The traditional list of democratic rights is expanded to include the right to work, maintenance, security, rest and leisure, medical attention, and education. The individual is made secure against want (redistribution of wealth), sickness (health and sanitation), old age (pensions), ignorance (education), and accidents (Insurance). The workers enjoy the right of collective bargaining. An active support programme for agriculture guaranteeing the farmer a minimum price level for his products may be encouraged, for, this is of benefit not only to the farmer but also to the worker and the industrialist, since a prosperous industry depends upon a prosperous agriculture. Right to leisure includes shorter hours of work, better pay, better housing, sanitoria and health resorts, and entertainment.

In a country like India, the ideal of social welfare state must necessarily include the active implementation of the Directive Principles of State Policy contained in Part 4 of the Indian Constitution. A Welfare state has to act both as a policeman as well as a nurse. It has to help the individual not by keeping off the fence of life, but by providing a definite direction so that life may have a purpose and a meaning. Public administration has, there-

fore, to be in tune with these objectives. If the State is not to be merely a policeman, a collector of revenue and dispenser of bare justice, and if it has to control and regulate production and distribution and ensure social welfare, the administrator must possess skills and values different from those in a colonial or feudal regime. As Mr. K. M. Panikkar put it:

"The great new industries under State control repuire a different type of administrative personnel. Large-scale multipurpose schemes involving irrigation, electricity, *etc.* require not merely highly trained engineers but administrative personnel of high ability and experience. The Community Projects and National Extension Services which are designed to bring about a rural revolution covering the whole country required skilled personnel at all levels, which cannot merely draw up programmes but work in close cooperation with the people of the fvillage... Side by side with this, if a comprehensive industrial programme has to be undertaken by the State, apart from training a managerial service, the new State has also to organise all available technical skills and bring them into the service of the State."[1]

Now, in the advanced democracies of the West, specially in Britain this problem did not create much difficulty for reasons to which we alluded earlier. There, the processes of the growth of democracy and the expansion and reform of the Civil Service went hand in hand. The Civil Service that emerged in the 20th century was of a piece with the political system of the country. It was, in a way, the outcome of a democratic state. In India, on the contrary, the Civil Service was well developed by the time we became independent and adopted a democratic constitution And this Civil Service which necessarily had to be an instrument of a negative state was suddenly called upon to be an organ of a positive, democratic, welfare state. This was an intriguing situation. The adjustment between the political wing of the state with the administrative wing created strains at all levels. We will deal in details with these problems in the following chapters.

If, in a welfare state the administration has to respond quickly and warmly to the needs of the people, there has to be a crop of administrative laws and regulations. This, again, is a serious matter and if neglected or handled unintelligently may well break up the framework of a welfare system. Administration has to be swift, efficient, sympathetic and orderly—a difficult combination to achieve. There has to be constant consultation with the interests effected at all levels. Policies have to be formulated in the limelight of publicity. Care has to be taken that the growth of voluntary associations which represent the life breath of a democratic society is not tampered with by an all-pervasive

1 K. M. Panikkar, *The Afro-Asian State and their Problems*. Allen & Unwin Ltd. London, 1959, pp. 36-37.

and meddling administration. The police, again, has an extremely delicate job to do, for, they have to operate on the basis of the maxim that prevention is better than cure. Instead of laying stress on the investigation of a committed crime, the emphasis in a welfare state has to be on the prevention of crimes. This clearly involves an educative function on the part of the police—giving information direction, and even psychological relief on a coordinated and planned basis. This can be done effectively if the work of detection is carried on efficiently and intelligently. Today in India, for eample, detection work of the Police, is by and large, part of the investigation of crime and is necessarily punitive in tone and content. This must be made curative if we are to be somewhere nearer the welfare state. The assumption, of course, is that man is essentially good and that intended crime is comparable to the symptom of disease and committed crime is the disease itself. The purpose of a welfare state is continuous and it is to ensure the healthy growth of the community. Here also attention is to be given to that section of society which is maladjusted and is likely to break the laws. Planning is meant not so much for the privileged as for the underdog and hospitals are set up for the sick with a view to making them fit and not to kill them. The police, on this showing, is intended to protect the fit from the unfit. But the unfit are to be made fit and are not to be liquidated. The gulf between them is to be bridged and not widened or made deeper. This approach quite naturally, will materially affect even the police role of investigation which otherwise may be merely mechanical. If in a community police failure to obtain a conviction adversely affects the career of the police personnel, the latter would definitely manouvre and would misuse the law of evidence. In fact in a welfare state the scales of values are to be changed. The highest government dignitaries must not only be accessible to members of the public who wish to visit them, but they should encourage the citizen to meet them frequently and to communicate their ideas freely as well as to learn the problems the state has to face. Nothing brings the administration into greater disrepute than [illegible] is, therefore, more important than [illegible] ciate the manner in which it functi[illegible] the more sources of information he has outside the force the more efficient will he be as a police officer. Indifference, inertia and unscrupulousness have a corroding effect on public services. Administration in a welfare state, must be prepared to set an example of diligence by night and by day and to give close and unremitting attention to infinitude of detail. If it lets the pebble of indifference drop on the quietest surface it must expect to see the ripples slowly extending to unknown horizon. Finally, the courts of justice have to be instruments of Justice and all that it implies.

The principle of harmony born of healthy and active divergences is essential in the political and administrative sphere.

It is equally vital in social system. Removal of social tensions is one of the primary functions of a welfare state. Social tensions may be generated by exploitation of women, of the backward classes, social inequalities based on birth or caste, unhealthy social practices such as child marriages, drinking, beggary, polygamy etc. Connected with this is the economic philosophy of the welfare state for, there cannot be real social security except in a climate of tolerance and confidence born of economic security. From another point of view, protection against the worst dangers of want, sickness, and old age not only is indicated by humanitarian considerations, but also has important economic effects, since such measures of social security provide people with a minimum purchasing power indispensable to the functioning of industry in prosperity and depression. Collective bargaining between labour and management substitutes peaceful discussion for violence. Since the state can only give what it takes, citizens in a welfare state have constantly to be reminded that the condition for higher social security benefits is to work harder, produce more, and pay for them before the need arises. If equalization of incomes is an ideal to be cherished, one has to agree to redistribution of wealth which calls for a sound policy of taxation. Incomes have to be levelled up rather than levelled down. On the same logic, if internal peace and welfare is to be achieved within a state by redistribution, the same principle must be applied, through foreign aid programmes, to the underdeveloped countries. "If the welfare state at home is cheaper than unrest and revolution", it has been suggested "international welfare policies are cheaper than war and communist expansion."

It should be remembered that the welfare state, providing for the citizens education, health, employment, pensions in old age, is not a way of getting something for nothing and that every price of welfare has to be paid for. This is practicable because people agree that a high portion of their income should be spent by the government in a certain way so that it can look after them better in emergencies. The individual is thus obliged by the State to save. To put it differently, the individual hands over to the state the job of saving for him in case of an emergency such as sickness, old age, or death. In this sense, the welfare state is "forced personal and communal saving today for the needs of tomorrow rather than a simple method of transferring property from the rich to the poor".

We may thus conclude that the welfare state is just a machine intended to mitigate the natural results of free competition so that no one would be very poor, no one the helpless tool of the boss, no one cut off from the culture and beauty of the world, and all, if not equal, at least provided with some chance of a full and dignified life. The Welfare state does not eliminate free enterprise totally but is a sound alternative to communism. It does not necessarily lead to regimentation or complete centralization. As Kingsley Martin has put it : "There is nothing in history.... to

show that if the State takes over the means of distribution, production and exchange then the administration must be completely centralized. On the contrary : we need small units of administration with local participation to the utmost within a general central frame work. The alternative as a Frenchman said, is "apoplexy at the centre and anaemia at the extremities."[1] Finally, it may be pointed out that without changing the basic form of government or way of life, the welfare state seeks to strengthen democracy by strengthening the security, self-respect and freedom of democracy's citizens.

DEMOCRACY EVALUATED

Democracy is government by response and consent elicited through debates and discussion. Thus it is the only type of government under which those who exercise public authority can be subjected to the control of those in whose interest they are chosen to govern, and the only one in which their responsibility to the governed can be adequately enforced. Being freely chosen by their fellow citizens, ordinarily for short terms and accountable to them for the manner in which they exercise their trust, those who are called to govern will be the most representative, the most competent and the most worthy of the public confidence, whereas in a monarchy or in an aristocracy those who govern may be appointed on the basis of widely different considerations. Thus popular election, popular control, and popular responsibility are more likely to ensure a greater degree of efficiency than any other system of government.[2] The fact is that if democracy has grave defects so also have all other forms of government. The specific defects of democracy are those of youth, that democracy is raw to its work, and hence its worst failings are due to immaturity and are likely to be overcome by experience.[3] To doubt that democracy will even be purged of its vices, and will be cured of them by the triumph of its own better qualities, is to despair of human nature itself.[4] Even in its present imperfect state of development, democracy has a supreme ethical and educational value which places it far above all other forms of state or no-state whatsoever. Even the opponents of Democracy concede that it has some good qualities. It is intensely interesting in a world that tends to boredom.[5] It is also informative[6] because it provides the means through which the wishes of the people may be known.[7] Moreover it counters the danger of revolution because changes in law can be brought about by quicker mode.[8] Further, Demo-

1 Kingsley Martin, *Socialism and the Welfare State*, 1951, pp. 19-20.
2 Garner, *op. cit.*, pp. 390-391.
3 MacCunn, *op. cit.*, p. 70.
4 Hearnshaw, *op. cit.*, p. 72.
5 Sir Henry Maine, *Popular Government*, p. 147.
6 Foguet, *Cult of Incompetence*, p. 195.
7 Gettell, *Introduction to Pol. Science*, p. 101.
8 Sidgwick, *op. cit.*, p. 615.

cracy breeds a sort of "love of country". It promotes a better and higher form of national character than any other polity whatsoever.[1] It rests upon two golden principles as J. S. Mill put it. First, that the rights and interests of the individual are safeguarded because he is able to "stand up." Second, the general prosperity attains a higher degree and is more widely differed.[2] Even if there are some grave defects we must not discard democracy. If motor-cars cause some accidents, it is no argument to ask to revert to the bullock-cart. The cure for the shortcomings of democracy is more democracy. Moreover if Government is to be based on Right, who is to determine what is Right? The best persons to do it are the people. The voice of the people is the voice of God.[3] Laws made by all would be respected by all. Finally, Democracy may be said to be the perfect and permanent flower of a completed evolution.[4] No institutions are secure, but those which rest on sustaining power of the community are the strongest.

But then, there is the dark side of the moon. Democracy has been charged with failure to secure a good government. It could justify only by sorting out the best brains of the nation.[5] It ignores and reflects the noble silent man; and places power in the hands of wind-bags and charlatans.[6] The typical product

1 J. S. Mill, *op cit* Chapter iii, p. 205. Refer to Lord Bryce *op. cit*, Vol. I, p. 6. He says that "the manhood of the individual is dignified by his political enfranchisement and that he is usually raised to a higher level by the sense of duty which it throws upon him".

2 There have been publicists who have argued that Democracy has transcendant claims for in it alone is self-realization possible. Thus it is an end in itself and something to be valued with an almost religious fervour. Refer to J. S. Mackenzie's, *Introduction to Social Philosophy*, p.263, and *International Journal of Ethics*, Jan. 1906, p. 131. Compare the view held by Prof. John Dewey in his "*Ethics of Democracy*" pp. 13-14 "In conception at least democracy approaches most nearly to the ideal of all social organizations, viz., that in which the individual and society are organic to each other," See M'Kechnie's, *The State and the Individual*, p. 30

3 Compare Tulius West, *A History of the Chartist Movement* (1920), pp. 88 and 167.

4 Oppenheimer, *The State* (1914), p. 275 Refer to Wilson's, *State Rev. ed.* 1898, p. 581 and compare MacIver's, *The Modern State*, 1925, p 340.

5 Ramsay Muir, *Peers and Bureaucrats*, p 57.

6 This is the burden of Carlyle's condemnation. Ruskin, Mathew Arnold Sir James Stephen, Sir Henry Maine and Lecky join him in his denunciation. John Stuart Blackie in his *Democracy*, p 35, says "Even when left free from the spur of the ambitious demagogue the magic oil of the flatterer, and the glamour of the political dreamer, the people have for the most part neither the will nor the power to find out the best men to lead them." Also refer to Sir Sidney Low's, *Governance of England*, p. 199. "Modern representative institutions have not brought into the national service the highest skilled talent of the community". Compare it with L. T. Hobhouse's, *Democracy and Reactions*, pp 184-85, and E.L. Godkin's unforeseen, *Tendencies of Democracy*, chapter ii.

of popular rule is the politician, the orator, man of words, lawyer-politician, logic-chopper who is able to hypnotise the multitude. by eloquence, and to make the worse cause seem the better.[1] In order to become a politician, in order to come to the fore, one has to be first a mediocrity.[2] But if Democracy has failed to provide an efficient government, it has also failed to give a right direction to national policies.[3] For instance, it is characterized by indifference and apathy. It lets things drift.[4] It bears the hall-mark of ignorance because it is devoid of the knowledge which is necessary for the formulation of policies.[5] It is characterized by immaturity and tends to make rash experiments. Frequent changes of government sometimes result in the government by amateurs, those who do not have any experience of government.[6] These people flow in a wave of idealism and fall an easy victim to shibboleths and catchwords of the demagogues whom the people blindly follow and almost idolize.[7] This idolatory becomes more dangerous because it is not constant. Leaders and principles are razed to the ground as quickly as they are raised to heavens.[8] And yet none is responsible for these things. If disastrous experiments are tried. on no one can special responsibility be fixed[9] And yet there is a certain type of fanaticism and intolerance on the part of the majority. They call it brute majority. This brute majority at times becomes militantly dynamic; at others

1 Compare Hartmann *op.cit.*, p.36 "Democracy is the paradise of the shrieker, babbler, word spinner, flatterer and tufthunter." cf. Michel's, *Political Parties*, p. 175. "Demagogues are the courtesans of the popular will. Instead of raising the masses they debase themselves to the level of the masses." Also refer to P.T. Forsyth's, *Socialism, the Church and the Poor*, p.21. "Left to itself democracy gravitates to mediocrity", and compare it with Banmann's, *Persons and Politics of the Transition* p. 213. "History testifies unmistakably and unanimously to the passion of democracies for incompetence." See Bolingbroke's, *Dissertation on Parties* and H.G. Well's, contribution in *New York Times Magazine*, March 20, 1927; compare them with Walter Lippman's, *Preface to Politics* (1913) p.17. Raph Adams Cram's *The Nemesis of Mediocrity* (1919) pp. 21-22, makes interesting reading.

2 E. M. Sait, *Op. cit.*, p. 448.

3 Hearnshaw, *Op. cit.*, p. 57.

4 Ingersoll, *Fears for Democracy*, p. 138.

5 Brougham, *Political Philosophy* Vol. II, p. 195. Also compare J.A. Hobson's, *Crisis of Liberation*, p. 72.

6 Low, *Governance of England*, p. 210-214.

7 Compare Mr. A.L. Smith's (Master of Balliol College), *lecture in The Empire and the Future*, p. 81. "Another danger about democracy is its tendency to a sort of idealism, a readiness to take dreams for realities and to believe in the efficacy of good institutions." Also see Conway's, *The Crowd in Peace and War* Chapter X.

8 Hearnshaw, *op. cit.*, p. 59 and Cf. Brougham *op. cit.*, p. 120.

9 MacCunn, *Ethics of citizenship*, p. 74 and Hobhouse, *op. cit.*, p. 101. Hearnshaw, *op. cit.*, pp. 60-62, also mentions immorality irreverance, immovability, immoderation, intolerence, selfishness and greed as other vices of Democracy.

absolutely static,[1] and this majority is brought about by two vicious methods—the organization of party which entails corruption and factions and the feeding of the electoral mind on the empty husks of mere generalities like Liberty and Epuality.[2]

Democracy, moreover, tends to excessive interference in detail. It inclines to insist on specific mandates to legislators, on direct democratic control of administrative departments, on popular retrial of cases judged. The result is a weak, inefficient and corrupt government. The legislature becomes timid and time-serving; the executive feeble and slow; the judiciary double-minded and even unjust.[3] It also tends to create insubordination and anarchy. The fact that in a representative democracy the electors occupy the double position of master and servant, sovereign and subject, explains not only the weakness of the government, but also the insubordination and anarchism of the community.[4] But the greatest defect of Democracy is that it breeds corruption. A vote is not only an instrument of power which enables organized bodies of its possessors, if they feel so disposed, to defy the law : it is also a commodity of value which self-seeking politicians are prepared to buy at a high price. In our own country we are familiar with the actual price of a vote. Even the municipal electors are induced and purchased. Of course, with the growth of political consciousness this will disappear but at this stage it is only right to recognise its existence.[5] Lastly Deno-

1 Earnest Barker, *Political Thought* from 1848 to 1914, pp. 168-169. "Maasne argues that democracy, whatever its love of change during its militant phase, will in its triumphant phase pass into a Chinese stationary State.

2 *Ibid.*, p 169.

3 J. E. Barker, *Foundations of Germany*, Chapter 2.

4 *Hearnshaw, op. cit*, p. 64. Refer to Coulton's, *Pacifist illusions*, p. 32 and compare Butler's, *True and False Democracy*, p. 38.

5 Compare Earnest Barker, *op cit*, p. 231, and MacCunn, *op. cit*, p. 73 For a well argued case against democracy refer to W.S Lilly's, *First Principles of Politics* (G P. Putnam Sons, 1899), pp, 181-183. He concludes that democracy is both unnatural and unwise and that equal voting is "sovereignly inexpedient", "contrary to the nature of things", "unjust to the classes", "tyrannously repressive of the better sort", "unjust to the masses", and "unjust to the State". Also see Prof Von Sybel's, *History of the Revolutionary Period*, Chapters 2 and 4. In modern times Democracy has been severely condemned by Sir Henry Maine, Lecky, Treitschke, W. H. Mallock, E Barker, Lebon, Walter E. Weyl, and Prof Giddings. According to Sir Henry Maine "Popular governments have been repeatedly overturned by mobs and armies in combination" (*Popular Government*, p. 83). Lecky in his "*Democracy and Liberty*", 2 Vols, Vol. I, pp. 18-21, 381-302, characterizes Democracy as government by the "poorest, the most ignorant, the most incapable, who are necessarily the most numerous." Treitschke in his Politics. Vol. II characterizes Democracy as false, fickle, incompetent, unspiritual and barren, W. H. Mallock in his "*the Limits of Pure Democracy* (3rd Ed., 1918) makes a powerful indictment of Democracy and characterizes it as an "illusion" and Prof. Giddings in his *Democracy and Empire*, p. 239 calls it "a

cracy by giving the right to live does not guarantee the conditions of life. It is ultimately on the solution of this difficulty that the future of Democracy shall depend.

Future of Democracy

When we pose the question as to the future of democracy, we assume that Democracy has been seriously challenged. It was challenged during the interval between the two World Wars by the Bolshevik Revolution of Russia to which we have already referred. Democracy, it has been suggested, has become the cult of exploitation and imperialism. By emphasising freedom it emphasises freedom to exploit. The real complaint against democracy is not that it leads to inefficiency and weakness, but that it has become another name for crisis and colonialism. The capital question that democracy faces is thus "will it provide a certain standard of living to every man and woman"? The record of Democracies has not been creditable in this regard. Great Britain, America, France and Holland, the biggest democracies have all been imperialists. The great colonial empires in Africa and Asia, were for the most part acquired by wars of conquests. The most numerous and successful aggressions in this process were perpetuated by the democratic governments of Britain, Netherlands, Belgium, France and pre-fascist Italy.[1] Prof. Merriam argues that in the near future several factors, *e.g.*, the emergence of superior forms of public administration, the growth of education, the emergence of the era of abundance, the emergence of industrialized democracy and the growth of the nore abundant life, will make the task of democracy easier than efore.[2] He lays down the following programme to ensure the ture of Democracy :

"(1) A positive social program including the guarantee of l employment, of economic stabilization and security, of inasing productivity with equitable distribution of national gains; and a guarantee of minimum standards of living appropriate to our stage of civilization.

"(2) Adequate machinery to make democracy work, including suffrage and civil rights, the sharpening of legislative organization and objectives, the further development of public administration, attention to plan-making and planning of national resources.

balloon of unbridged emotionalism". Also refer to Dr. Benes', *Democracy Today and Tomorrow*, pp. 59-61. Lord Bryce in his *Modern Democracies*, 2 Vols. has given a critical appraisal of Democracy. Refer to the 1929 Reprint Chapters III, IV, V, VIII, X, LXVIII, LX, LXI, LXVIII, LXXI, LXXVI, LXXVIII and LXXX.

1 Compare Schuman's, *International Politics* 4th Ed (1948), p. 153 For a powerful indictment of these countries refer to R. P. Dutt's, *India To-day*.

2 Merriam, *op. cit.*, pp. 207-211.

"(3) The development of a system of Jural order in the world, maintained by force if necessary, through which war may be outlawed as an instrument of national policy by some effective form of understanding or association....

"(4) Faith in democracy's political ideals with (a) greater stress upon human values in the larger sense and (b) greater emphasis on the broad possibilities in the coming era of abundance."

We have to bear in mind the real challenge Democracy is facing today. There is the vital question of efficiency and speed. Will democratic societies be able to answer the calls made on them by the complexities of atomic era ? There is a real danger of democracy crashing under its own weight—the weight of bureaucratism, red-tape, and inertia. [illegible] as free press and free elections can [illegible] nerated. In the name of freedom, [illegible] permitted and defended. We have earlier referred to the fate of democratic experiments made immediately following the first world war and the second world war. No democracy has ever been successful in a country without a high level of literacy, relative prosperity, highly developed professions, strongly established and broadly-based leadership, and a strong and confident middle class. Faith in the popular will and the efficacy *of constitutional restraint are indispensable.* Yet both are eluding us at present. We are so preoccupied today with the multitude of questions that increasingly call for answer in a desperately complicated world that we are rendered incapable even to understand them, let alone dealing with them effectively. The voter becomes a mass of apathy and readily abdicates his sovereignty. Now, that was not the pre-supposition of traditional democracy which assumed an intelligent attention and capacity in public affairs on the part of the people and a will directed towards the general good. Constitutional restraint tends to melt away when we deal with those whom we tend to regard as enemies of democracy. Justice Holmes' Golden Rule for freedom of thought was : "not free thought for those who agree with us but freedom for the thought that we hate." At present in the so-called democratic world we tend to suppress the opinions we do not like. Face to face with communism, Democracy tends towards Fascism and thus by a curious irony acquires the bark if not the bite of totalitarianism. While the advocates of democracy are very critical of state control on the ground that it takes away individual enterprise, they deliver their favourite baby into the sterner hands of the monopolies and trusts. We have to remind ourselves that possession of unchallenged economic power deadens initiative, discourages thrift and depresses energy, and that immunity from competition is a narcotic, and rivalry a stimulant to industrial progress. A Republic as the unchallenged possessor of economic power can be as harmful to Democracy as an economic monopoly or an Industrial Monarch.

TYPES OF DEMOCRACY

Democracies have been classified on the basis of direct or indirect participation of the people in the political processes as Direct Democracy and Indirect or Representative Democracy. From the point of view of the relationship between the organs of the government Democracies can be classified as Presidential and Parliamentary. From the point of view of the nature of the Executive, Democracies can be classified as Monarchical and Republican. Direct Democracy is one in which the will of the state is formulated or expressed directly through the people in mass meetings or primary assemblies, rather than through the medium of delegates or representatives chosen to act for them. This sort of government is possible only in small communities inhabiting a small territory. In the small city states of ancient Greece and Rome this type was prevalent. Today the surviving examples of direct democracies are found in smaller cantons of Switzerland. The local town governments in some American States are other examples of this type. In states or local communities where referendum and initiative work, some sort of direct democracy works. The system of direct democracy provides for training and experience to every citizen in the art of government. It brings every citizen in direct touch with political process. Since every measure is publicly discussed and criticized, legislation becomes rational and useful and is not likely to be broken easily. This process also lessens the chances of class tyranny and class legislation. It leads to the perfection of individual personality and renders him intelligent and careful. It is an excellent barometer of the political atmosphere. Referendum and Initiative enable the legislature to maintain a living contact with popular opinion. If referendum is a remedy for the sins of commission on the part of the legislature, initiative is the remedy for the sins of omission. The former works as a shield; the latter as a sword. Each complements the other. Recall is used only in the U. S. S. R. and in some states in America. Apart from providing a veritable school for political training, these devices lend greater moral authority to the laws passed, and apply healthy checks on the Legislature and the Administration.

But direct democracy is possible where every citizen has leisure enough to devote himself to the task of government. Moreover, there is always a danger of popular passions and caprices, for people are generally led astray by appeals and sentiments. Burke said "a perfect democracy is the most shameless and the most fearless thing in the world."[1] It also leads to party factions and rejection of merit. The weight of mere numbers often kills the fibres of quality. Referendum and Initiative while they limit the legislature, also affect its prestige and even its sense of responsibility. They place in the hands of the mass of people a power

[1] Burke's *Reflections on the French Revolution*, p. 37.

which they are hardly qualified to exercise. The verdict of the referendum on a certain law may be perverse and may not be based on the merits of the case. Popular resentment against a certain policy may be expressed by popular rejection of even a good piece of legislation. Decisions may be minority decisions. Frequent resort to these devices may be very expensive, and may lead to electoral fatigue. In any case in bigger states Direct Democracy is hardly workable. In these states as a rule we have representative government.

REPRESENTATIVE GOVERNMENT

Representative government may be defined as a government in which those who are at the helm of affairs are the accredited representatives of the community. They are supposed to reflect public opinion. Representative Government thus comes to be based upon universal suffrage. In modern times States are country states, with large areas and large population which have made Direct Democracy obsolete. Representative Government has taken two major forms in modern times—Parliamentary and Presidential The presidential system operates in the U. S. A. and in all the Latin-American states, except in Uruguay. The Parliamentary system prevails in the U. K., Canada, Australia, Newzealand, South Africa, India and Ceylon, Ireland and on the continent of Europe except in Russia the People's Democracies and states like Portugal and Spain.

Parliamentary Government is a government where Parliament is supreme in relation to the Executive. It is the supreme law-making body to which the executive is responsible. The Executive Members are members of the Legislature and are answerable to it. In a parliamentary government the life of the executive depends upon the will or confidence of the legislature. The basic principle is thus the principle of responsibility which is enforced through interpellations, adjournment motions, debates, investigation commissions, votes of no confidence, and financial control. Thus in a parliamentary democracy the Government carries on the general administration of the country with the help of Parliament which help is expressed in a permanent and general control of governmental acts, destined to guarantee that the directing ideas which inspire the Government's policy correspond with the opinions predominating in Parliament, and that control is made effective by the political responsibility of the Government before Parliament. Finally, in a parliamentary government there is invariably a sense of unreality expressed in a gap between theory and practice. Legally, executive powers are exercised by the head of the state who may be a hereditary monarch as in Britain, or a nominated Governor-General as in Canada or an elected President as in India. But in practice these powers are exercised on the advice of a Council of Ministers responsible to a democratically constituted legislative assembly.

The working of the Parliamentary Government rests on the Cabinet. Thus Parliamentary Government is also called the Cabinet Government.

This nominal executive formally appoints the real Executive—the Prime Minister and the other Ministers. The Prime Minister is always the leader of the party having majority in the legislature and he selects other ministers from among his own party. These people are, therefore, members of the Legislature and have to explain their conduct and policies to it. On a vote of censure by the Legislature, the whole executive has to resign *en bloc*. Thus the main principles of the Cabinet Government are (1) the leadership of the Prime Minister in the Cabinet; (2) Homogeneity of the Cabinet (3) Joint responsibility and (4) Solidarity and secrecy.[1] All these principles have broadly been incorporated in the politicalsystems of most of the commonwealth countries. While these principles are conventional in the U. K., they have become, with some exceptions, part of the written Constitutional laws elsewhere. In India, for instance, while the principle of collective responsibility finds a place in Article 74 (3) the principle that the President *must* always act on the advice of his ministers is not mentioned. Article 53 vests the executive power in the President and Article 53 (1) provides for a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. There is, nevertheless, no specific and categorical provision making the aid and advise of the Ministers mandatory on the President. In Ceylon, the principal features of Cabinet Government are specified in her Constitution. In South Africa certain departures from the principles of unanimity and collective responsibility have been evident in recently and a resignation has not immediately followed a serious dispute within the cabinet. This is, of course, due to the republican tradition which tolerated a loosely organized executive. In Canada as well as in India, racial, religious and regional considerations affect the composition of the Cabinet, while in Australia, at least, when the Labour Party is in power, the selection of the Cabinet is powerfully influenced by the party caucus. In most Commonwealth countries it appears to be the practice to include the entire ministry within the Cabinet, but in January 1955, Australia adopted the British practice and formed a Cabinet of 12 selected from the 22 ministers in the Government. In India since independence the British practice has been followed.

[1] Ogg describing the characteristics of the Cabinet, in his *English Government and Politics*, pp. 52-53 says that the Cabinet is a body "consisting (a) of members of Parliament, (b) of the same political views (c) chosen from the party having a majority in the House of Commons (d) carrying out a concerted policy (e) under a common responsibility to be signified by collective resignation in the event of parliamentary censure and (f) acknowledging a common subordination to one chief minister.

We have seen that the Cabinet system is characterized by a collaboration between the Executive and the Legislative Departments. Thus the Cabinet is a sort of a committee of the Legislature and helps carrying out the wishes of the majority with the greatest agility, despatch and strength.[1] This collaboration enables the ministers to feel the pulse of the Assembly and through it the force of public opinion. Thus they can obtain useful criticism, given privately in a friendly way, of their measures while the members can by their right of questioning ministers call attention to any grievance felt by their constituents and can obtain information on current public questions. Moreover, the system also secures what Bryce has called swiftness in decision and vigour in action by enabling the Cabinet to press through such legislation as it thinks necessary with the help of majority. The Cabinet system ensures special vigilance, care and responsibility. The Cabinet is limited within and without. Within, it is constantly under fire of the opposition; without, it has the dread of general elections and thus has to do nothing which might falsify the confidence of the people. This means that the Cabinet has got to be very careful and cautious, and needs capable people to be in charge of administration. The selection of such capable people is the task of the House of Commons.[2] Moreover, the presence of an opposition to criticise the Government and offer itself as an alternative Government has always a sobering effect upon the Government. The presence of the opposition in the House renders it extremely sensitive to public opinion[3] The Cabinet system, furthermore, is greatly flexible to meet new situations and conditions, for, the executive can explain its point of view to the legislature as a whole.[4] This system, furthermore has the supreme merit of making the nominal executive as non-partisan in character. Finally, the executive can continue in office so long as it enjoys the confidence of the legislature. "A flexibility of the policy is thus assured which prevents that deadlock in action which occurs whenever the American President is at odds with the Congress and that even when his own party is in power. The presence of the executive in a legislature enables it to explain its policy in the one way that ensures adequate attention and organized criticism. It is not attention and criticism in a vacuum. It is attention from and criticism by, those who are eager to replace the executive if it proves unconvincing. It thus makes for responsibility. It prevents a legislature which

1 Compare Bryce, *op. cit*, Vol. II, p.510 and Dicey's, *Law of the Constitution*, pp. 484-485. ee Willoughby's, *The Government of Modern States*, p. 258.

2 Laski's, *Parliamentary Government in England*, pp. 227-228. "To reach the Cabinet at all, they will have had to display as a general rule certain qualities of character, commonsense, judgment, the ability to make a case, the power to meet an emergency, which are at least the basis upon which the successful administration is built."

3 W. I. Jenning, *The British Constitution*, p. 11.

4 Willoughby, *The Government of Modern States*, pp. 259-260.

has no direct interest in administration from drifting into capricious statutes. It arrests that executive degeneration which is bound to set in when the policy of a ministry is not its own. It secures an essential co-ordination between bodies whose creative interplay is the condition of effective government."[1] In short the cabinet system enjoys the chief merits of being flexible, adaptable to circumstances, manageable in size, workable in perfect order and capable of quick action.[2]

But from the opposite angle, the Cabinet system is essentially a party affair. Thus the whole system as Lord Bryce has written, intensifies the spirit of party and keeps it always on the boil.[3] This party system not only works up a certain agitation in the country, it also keeps up a sort of antagonism inside the House. There is opposition for its own sake which leads to waste of their time and energy. Sometimes it even leads to hand-to-hand fight. In France even eggs and shoes were hurled over members.[4] In Pakistan mikes were thrown and in some state legislatures in India also indecent scenes were enacted.

Moreover the collaboration between the Executive and the Legislature may lead to an utter subordination or slavery of the former. It may also lead to such a domination of the Executive over the Legislature that the latter becomes ineffective, uncritical and paralysed.[5] As Laski has put it, the Cabinet system certainly gives the executive an opportunity for tyranny. It can, if it so pleases, make the most minor issue a question of confidence, and so proffer the alternative either of a support that is not whole-hearted or a dissolution which will prove inconvenient. Thereby it undoubtedly tends to make debate unreal, for so much depends upon keeping disciplined the ranks of the party in power, that members are not unlikely to oppose a policy in speech and support it in the division lobby from fear of the consequences of hostility in the latter place. The initiative of the private member may be so restricted by a strong executive

1 Laski, *A Grammar of Politics*, pp. 346-347.

2 Wang teh yu, *The English Cabinet System*, p. 403 Cf. Sidney Low, *op. cit.* p. 39. Lord Bryce, *op. cit*, 7 Vol. II p. 464.

3 Lord Bryce, *op. cit.*, Vol. II, p. 512. "Even if there are no important issues of policy before the nation there are always the offices to be fought for ..... It is like the incessant battle described as going on in the blood-vessels between the red corpuscles and the invading microbes".

4 *Ibid.*, p. 512.

5 Dicey, *Law of the Constitution*, p. 484. "...Under a system of Cabinet government the administration of affairs is apt, in all its details, to reflect not only the permanent will, but also, the temporary wishes, or transient passions and fancies of a parliamentary majority, or of the electors from whose goodwill the majority derives its authority. A parliamentary executive, in short, is likely to become the creature of parliament by which it is created, and to share, though in a modified form the weaknesses which are inherent in the rule of an elected assembly. . . . . ."

that he is reduced almost to nullity. He can become a person only by revolting and by revolting, he may place his opponents in powers. The legislature may easily, as a consequence, be reduced to... an organ of registration for decisions.[1]

From the dictatorship of the Cabinet it is the next step to have dictatorship of one man or a small group of men. The final decisions are reached in the conference of select ministers. The Legislature can ónly be a ventilating body.[2] Moreover, the Cabinet for fear of being ousted from office as well as from power tries to placate the parliamentary opinion. The collaboration of the Executive and Legislature results sometimes in meddling. Ministers are prone to be distracted or led away from their executive duties by their legislative commitments and the Parliament may be tempted away from legislative problems by interesting questions of current administration. It may thus even meddle in foreign affairs and thus bring about a needless interference in a sphere in which it cannot claim full knowledge of facts and situations.[3] This sort of wrangle renders the whole system weak, delaying and indecisive in times of war and cannot meet a national crisis with promptness and vigour.[4]

Further the Cabinet system runs more successfully on the basis of 2 party system. When in England between 1876 and

1 Laski, *A Grammar of Politics* (Reprint of 1950), p. 347. Compare the view here expressed with the view expressed in a later work "*Parliamentary Government in England* (1938), pp. 154ff. and 165ff. "The argument of a mechanical debate devoid of reality is, shortly, nonsense". And he adds "once the power of the Cabinet over the private member was relaxed, we should have what is in fact government by public meeting. ... Those who ask for the abrogation of any considerable measure of Cabinet control are in fact asking for what would be bound to develop into the destruction of ministerial responsibility". Also compare Bryce *op. cit.*, Vol. II, pp, 5, 2-14 and Garner, *op. cit.*, p. 428.

2 See Laski, *op. cit.*, pp. 147 ff. and compare Sidney and Beatrice Webb's "*A Constitution for a social commonwealth of Great Britain*" (1920), pp.67 ff., Cob's, *Labour in the Commonwealth* pp. 101-104, Belloc's, *The House of Commons and Monarchy* 1920, pp. 10 ff, and Dodd's, *Is Liberalism Dead?* pp. 73 ff. For the relationship between the Cabinet and the House of Commons refer to Low, *op. cit.*, p. 75 and Lowell's, *The Government of England*, Vol. I pp. 325-327 and Marriott's *Second Chambers*, p. 58.

3 Sidgwick, *op. cit.*, p. 444.

4 Gilchrist, *Principles of Political Science*, pp. 245-246. Gilchrist concludes that the English Cabinet system compares favourably with the Presidential system in times of peace, but unfavourably with it in times of war. Compare this view with the view expressed by W F. Willoughby in his "*The Government of Modern States*", p. 260. He says : The Presidential Government finds itself unable promptly to bring to bear all of its powers for the meeting of grave crisis. If unity of action can be secured at all, it is secured with difficulty and with unavoidable delay. ..The government of a Constitutional Union of powers, in a word, can meet emergencies as they rise with its hands free; the government of a Constitutional separation of powers must meet them with its hands more or less shackled."

1906 there appeared a third party and somewhat later, a fourth the system worked less well. The same thing happened in Australia after 1900 and in South Africa and Canada. In France the Cabinet instability is notorious. Group alliances are what chemists call an unstable compound, and when they dissolve, down goes the Ministry. Again, in the Cabinet system it has been pointed out there is no check on passions and decisions are reached in the heat of argument. But this is not a convincing criticism because there is the all important check of the opposition and the check emanates from the fear of general elections. In fact, no government can run without some sort of check. In short, on the one hand, the Cabinet type of government has unstable life, and is overworked; on the other, the opposition generally plays destructive role so that prompt and speedy decisions are made extremely difficult.

THE PRESIDENTIAL GOVERNMENT

The Presidential Government is one in which the Legislature is not supreme; in which the constitution which is written is supreme; in which the written constitution lays down the different spheres of different organs of the Government; in which, therefore, the executive is independent of the Legislature in respect of tenure and is not responsible to the Legislature. It is a government where the law of the Legislature may be declared null and void by an independent judiciary if it feels that the law has transgressed the limits set upon the Legislature by the Constitution. In such a system there is no distinction between the titular or nominal Executive and the Real Executive. In this system, on the contrary, the chief of the State is both the nominal and the real Executive. He may act through his agents called ministers or secretaries but they do not thereby assume the responsibility to the Legislature for his acts.

In legal theory, their acts are his acts; they are chosen by him usually from the members of his own party, but they are not taken from the legislature. They do not, therefore, unlike Cabinets in countries where the parliamentary system prevails, prepare, introduce, and advocate, in the legislative chambers, the measures which they desire to have enacted into law, except in so far as they may do so through the agency of particular members of the ·-lature who may be in sympathy with such measure. They are responsible to the President, never to the Legislature, and are therefore, to be dismissed by him alone. He and they may be impeached by the Legislature for the specified crimes. But votes of censure by the Legislature have no legal effect upon them. Even rejection of their demands does not legally affect them. Thus, the chief executive once elected, is responsible to none except to the Constitution and through it to the People. Since under the presidential system the chief executive and his Cabinet may, and in the United States not infrequently do, belong to a r

party which is in minority in one or both chambers of the legislature, their responsibility to the legislature under such circumstances would manifestly lead to the break-down of the presidential system. The President and his Secretaries may misgovern the country or govern it inefficiently, but the president has a Constitutional right to his office until the legal expiration of his term, and the members of his cabinet have a right to theirs so long as the president retains them. But it should not be inferred that there is no contact between the Executive and the Legislature in a Presidential government which is based on the theory of Separation of Powers. In actual practice, the President, as in the U. S. A., is dependent on the Congress for support and cooperation if his policies are to be adopted and implemented. Despite the separation of powers, the Congress approves all policy proposals which need to be enacted by statute; it appropriates the funds necessary for government agencies. The Senate confirms major appointments and ratifies treaties. And this is a very real power. The President must get along with the legislature if he is to be successful. The tragic example of Wilson who took the Congress for granted and had to pay a terrible price illustrates this. With the increasing volume and growing complexity of the activity of the State and the expanding areas such as employment, social security, atomic energy, international organization, and foreign aid, the responsibility and powers of the executive in the U. S. A. have correspondingly increased and with it has also increased its dependence on the Legislative wing of the Government. Finally, separation of powers does not preclude presidential messages and recommendations to the legislature (including executive preparation of budget proposals), the veto, and the calling of special sessions.

In short, Presidential government presupposes a written Constitution, elections at fixed intervals, a comparatively weaker party discipline than is required in a parliamentary government, a fixed tenure of the Executive as well as of the Legislature (the Legislature here cannot dismiss the Executive and the Executive cannot dissolve the legislature) and a concentration of the real and nominal Executive in the same hands. The Working Executive is also the ceremonial chief of state and is neither chosen by, nor responsible to the legislature. He is elected directly by the people or by some sort of electoral college, and for a term which usually does not coincide with that of members of the legislature.

The merits and demerits of the non-parliamentary executive are the exact opposite of the merits and defects of a Parliamentary executive. Each form of administration is strong where the other is weak and weak where the other is strong.[1] In the Presidential system the Executive is comparatively independent and has not to cater to the whims of the people. As Dicey tells us President Lincoln rendered an untold service to the U.S. by acting

1 Dicey, *op. cit.*, pp. 484-85.

in defiance of the sentiment of the moment on his own conviction as to the course required by sound policy.[1] Since the Ministers cannot be turned out by the adverse vote of the legislature any moment, there is a greater stability and a greater continuity of policy in the American system. The President as Lord Bryce writes is considered the head of the Nation and not merely a party leader.[2] But the defects of the Presidential System are more serious. Here, responsibility and authority are divided among a number of organs. Each is jealous of its own power. Effective co-operation between the several organs of government becomes a difficult task. The entire system becomes rigid. In its practical operation, disputes regarding the powers of the several organs are bound to arise and these disputes cannot be settled on their merits by an act of legislature but must be decided by courts which in reaching decisions, are bound by the working of the Constitution. The result is that not only is the decision made by that branch of government which is not concerned with matters of policy and expediency, but the decision itself is often one which fails to conform to the needs of the case and may be contrary to the wishes of the government and of its people as a whole. In all such cases, the only remedy is by way of the difficult process of securing an amendment to the Constitution.[3] The Presidential system, moreover, has been characterized as autocratic, irresponsible and dangerous—autocratic because the President may govern according to his own sweet will not even consulting his own ministers; irresponsible because the legislature cannot turn him out, and dangerous because there are no adequate means of holding him accountable for the manner in which he exercises his power. Needless conflict, confusion, delay and procrastination arise because of the separation of functions and powers.[4]

Since the Ministers cannot sit in the legislature, there can be no vital connection between legislature and administration. The needs of the government may not only be fully understood and their necessity realized by the legislature, they may even be ignored.[5] The Presidential System, in fact, leaves more to chance than does the Parliamentary system. The success and failure of administration depends upon the qualities of head and heart that he possesses. If he can raise the nation to heights by his nobility of character and high ideals, he can also debase it by his selfish distribution of patronage and by his policy of catching votes for his re-election.[6] Responsibility to the people is better secured in the parliamentary system than in the Presidential system, because

1 *Ibid.*, p. 488.
2 Bryce *op. cit.*, vol. II pp. 316-17.
3 Willoughby, *The Government of Modern States*, pp. 258-260. Also compare Lowell's, *Government of England*, Vol. II p. 532.
4 Godkin, *Unforeseen Tendencies in Democracy*, pp. 98-99.
5 Wilson, *Congressional Government*, Chapter 5.
6 Bryce, *op. cit.*, vol. II p. 515.

the Ministry in the former cannot shift the blame to the Parliament. If it is not supported by the legislature, it has either to dissolve it or resign office and the opposition comes in and assumes responsibility of administration. But under the Presidential system responsibility can be thrown on the legislature only if it has failed to pass laws at the President's request or if it has withheld money that he demanded for his departments. But if there is a conflict between the executive and the legislature, and the President does not belong to the party in power in the House of Representatives, there is nothing to resolve the deadlock easily and the whole administration and legislation suffer from its paralytic effect.[1]

This circumstance may produce a stalemate which in the time of crisis as during 1931-32, can be disastrous. Much time is consumed in struggles among the various branches to determine the extent of their respective powers and from another point of view the very stability of the syste [illegible] The Presidential system is often said [illegible] administrative policy during the [illegible] a British Prime Minister with a comfortable parliamentary majority has enjoyed the same advantage. Neither system can seriously claim superiority because of the expertness of its department heads, for, there is no guarantee that under the Presidential system the Cabinet appointees will be "experts". Both systems are equally exposed to the temptation of putting politics before national welfare.

We suggested earlier that in presidential system there is a wide opportunity of dodging responsibility for public policy. The reason is not far to seek. The President can blame the legislature for failure to act and *vice versa*. While a strong president can be assailed as a dictator, a weak president as a coward, and unimaginative. F. D. Roosevelt was often charged with numerous encroachments upon the legislative domain. On the other hand, the trend started changing under Truman. The Congress, later on, started probing President Eisenhower's defences by such measures as the so-called "Bricker amendment" and demands by the Congress Committees for confidential data in the hands of executive departments. Such tactics represent "a clear invasion of the executive's powers." It will be noticed that such rivalries are impossible for more than a very very short duration under the Cabinet system, for, they are promptly resolved by the resignation of the Cabinet, or of the Prime Minister, or of the dissolution of the legislature. It is also incorrect to say that Parliamentary Government is more responsible to public opinion than Presiden-

1 Laski, *A Grammar of Politics* pp. 344-45. Compare Bryce, *op. cit.*, Vol. II p. 521. "The Parliamentary system has many advantages for countries of moderate size, the Presidential constructed for safety rather than for promptitude in action, and not staking large issues on sudden decisions, is to be preferred for states of vast area and populations such as are the U.S. and Germany." Also refer to Ford's *Rise and Growth of American Politics*, Chs. 20-21.

tial, for, there is, in practice, no assurance that the electorate will be consulted more frequently under the former than under the latter. For example, in Britain only the Prime Minister can request a dissolution. No matter how much public ooinion may have changed since the last general election and numerous new issues may have arisen there is, nevertheless, no way to force a new election as long as the prime minister's majority holds together in Parliament. And the growth of tight party discipline has tended to lessen the frequency of parliamentary rebellion against the cabinet. But in one respect at least the Parliamentary system compares favourably with the Presidential type : it is more flexible. As a critic put it : in England a Cavour is not needed to rule a revolution whenever there is a crisis; they can at once change the personnel of the government and have a fit person to lead the nation. (For instance in 1940 the weak Chamberlain was replaced by the visible Churchill). But this is not possible under the Presidential System.[1]

THE COLLEGIAL OR PLURAL GOVERNMENT

In Switzerland, Uruguay and the Soviet Union, there prevails the collegial type of Government. Here there is no single person serving as the chief executive. The executive power is vested in a council, commission or presidium comprising of several members. The executive Council functions as a national Commission as in Switzerland and is completely subservient to the national parliament. In the U. S. S. R. the Presidium practically controls the legislature. In all such states, a single individual is designated to perform the cremonial acts traditionally associated with the chief of state but without being, in fact, more than a figure head. We will consider this in details in the chapter on Executive.

1 Bagehot, *The English Constitution* Chap. ii, sec. 9. He says "The American government calls itself a government of the supreme people, but at a quick crisis, the time when a sovereign power is most needed, you cannot find the supreme people. You have got a Congress elected for one fixed period, going out perhaps by fixed instalments which cannot be accelerated or retarded, you have a president chosen for a fixed period and immovable during that period, all the arrangements are for stated times. There is no elastic element, everything is rigid, specified, dated. . . you have bespoken your government in advance, and whether it suits you or not, whether it works well or works ill, whether it is what you want or not, by law you must keep it". For a very lucid discussion of the merits and demerits of the Presidential System ... A. B. Hart's, *Actual Government*, pp. 243-244.

3

THE FEDERAL SYSTEM

Two answers have been given to the question what authority has the legal right to determine the distribution of governmental power territorially, especially in the adjustment between the national government and its main subdivisions. One answer is that the constitution of the State may delegate all governmental power to the national government, which may create such sub-divisions and delegate to them such powers as it sees fit, changing their boundaries or their powers at its pleasure by ordinary legis-lative enactment. This system creates the Unitary Government. The other answer is that the Constitution of the state definitely provides for both a national government and the main sub-divisions, dividing the powers of government between them. Under this arrangement neither the national government nor that of its main divisions can change the other or legally interfere with the exercise of the powers that belong to it. Only by constitutional amendment can any readjustment be made. Thi system creates a dual, or federal government. According to Si John Seeley the unitary and federal system did not differ in kin but only in degree and that too depended on the extent to whic the principle of local government was carried. But this view rather incorrect and the difference between the two systems is basic and essential.[1]

According to Finer the Unitary State is one in which all author-ity and power are lodged in a single centre whose will and agents are legally omnipotent over the whole area.[2] Dicey defines it as the habitual exercise of supreme legislative authority by one central power. A federal State, he says, is a political contrivance intended to reconcile unity and power with the maintenance of State rights.[3] In a Unitary government all the powers of government are conferred in the first instance upon a single Central govern-ment and that government is left with complete freedom to effect such a distribution of these powers territorially as in its opinion

1 C. F. Strong, *Modern Constitutions*, pp. 59-60. Also refer to Marriot's, *The Mechanism of the Modern State*, Vol. II, pp. 381-82.

2 Finer, *Theory and Practice of Modern Government*, p. 90.

3 Dicey, *op., cit.*, pp. 131.

by the separate states and require handling on a broader basis. In most of the states where federalism prevails today (India is a prominent exception) before instituting the federal system there existed separate units possessing some or all of the characteristics of a sovereign State, and evoking loyalty and affection from their citizens. Yet they feel a common interest impelling them towards a fuller and more lasting union than can be achieved by a treaty or alliance between sovereign states. To understand why a unit has adopted a federal form of government we have, therefore, to examine, on the one hand, the factors which confer upon it its *distinct character* and its desire to preserve that character, and, on the other, the factors which create the common interest.

The factors of the former type are those which create any national group—history, geography, race or language or any combination of these. In the United States, differences in climate, configuration, distance from the sea, the complexion of the people and their background, had all combined to give the thirteen colonies their distinct economic interests. In Australia, geography and vast unpopulated stretches of land divided the people who oherwise were of one stock and spoke the same language. In Canada simpler factors operated with the added complication of the French-speaking Catholics of Quebec. "In Switzerland, and still more in India, the differences of religion, race and language are so marked that we are called on to explain rather why these communities came together at all than why they did so in a federal fashion."

The more important of the latter type of factors are defence and economics. Throughout the history of the federal system, these forces have been creating a community of interest which impelled people towards federal union of some sort. As K. C. Wheare put it : "The desire for a federation is based on a sense of military insecurity and of the consequent need for common defence; a desire to be independent of foreign powers and a realization that only through Union could independence be secured, a hope of economic advantage from the Union; some political association of the communities continues prior to their federal unions either in a loose confederation (as in [illegible] or as parts of the same empire (as in .
neighbourhood and similarit
famous Achean League was originally a defensive alliance of cities of Peloponnesus, and in its later shape, as revised in the 3rd and 2nd centuries (B. C. 281-146) this after-growth of Hellenic freedom assumed a more elaborate character. It included Corinth, Megara and many other important city-states of southern Greece. Each city retained the control of its own internal regulation but surrendered into the hands of the league the control of foreign relations and war.[2] Had it not been for the rise of the

1 K. C. Wheare, *Federal Government*, 1947, p. 37.

2 Cary and Haarhoff, *Life and Thought in the Greek and Roman World* (1940), pp 5-50.

world power of the Roman Empire, such a league might have supplied a means of converting the Greek city-states into a territorial national state. Similarly in ancient India we come across expressions such as Panchjananah, Saptajanah, virat, Samarath, Swarat and Sarwarat indicative of the size and the power of federal combinations.[1] The state in ancient India "was saturated through and through with the principle of what may conveniently be called federalism and feudalism"[2] and the compelling forces were the desire for prosperity and defence against external danger. Asoka's empire may itself be regarded as a loose federation rather than an empire in the commonly accepted sense of the word. The smaller republics south of Hyderabad must have voluntarily adhered to it in order to achieve greater economic progress.[3] In later history the short-lived combination of Italian cities in the 13th and 14th centuries may be spoken of as federations.[4] In Switzerland, the forest districts of Uri, Schwyz, and Unterwalden still nominally subject to the Emperor, banded themselves together *for protection* in 1291. The League thus formed grew in extent and power. Other districts and the free cities of Berne and Zurich, were joined to it. The defeat of Austria at the end of the 14th century gave it practical independence which was finally confirmed by the Treaty of Westphalia (1648) In the confederation thus formed each member retained its separate independence, *mutual protection* being the only purpose of the Union. In the last quarter of the 18th century America had evolved a truly federal system and in 1789 a federal constitution replaced a loose confederation. The people here had need of *commom action* not only to win their war of independence and to prevent reconquest, but also to develop their country by free trade, free movement, assured communications and universal currency. A similar need was felt by the people of Canada and Australia. The spread of German imperial ambition into the Pacific warned the Australian Colonies to look to their defences. The German confederation (1815-1866) a Union of 39 states was based on the desire to obtain external and internal security of the states. In 1871 it was replaced by the federaton of the German Empire just because "the German people realized that if they remained a loose collection of principalities they would always be outstripped by Britain and France in industrial development and acquisition. The realization was sharpened by the knowledge that once united, the Germans would be the largest, and could be the richest and most powerful state in Western or Central Europe."[5] Similarly in the case of India, economics and defence, *inter alia*, proved to be

1 R.C. Majumdar & others, *An Advanced History of India*, pp. 74-75. Cf. Kewal Motwani, *India A synthesis of cultures*, p. 171.

2 Beni Prasad, *The State in Ancient India*, pp. 504-505.

3 Humayun Kabir, *The Indian Heritance*, p. 8 and p. 57.

4 Marriot, *Federalism and the Problem of the Small State*, p. 96.

5 Michael Stewart, *Modern Forms of Government. Minerva Series No.* 4 (1959), p. 144.

decisive. The constitution that finally emerged provides for a strong centre which is not only a reflection of an existing unity but also a device designed to counter anticipated disunity.[1]

CONDITIONS OF FEDERALISM

This should be able to give the reader some idea of the conditions which favour the establishment and ensure the continuance of a federation. If the need of defence has been the main cause of the rise of federalism, it follows that where there are adjacent communities, anxious to preserve their independence but afraid of proving too weak in isolation to hold their own with powerful states in their neighbourhood, a federal union is an obvious recourse. *Geographical contiguity* which develops the sentiment of common interests is thus a primary condition of federalism. "Nearness of existence finds its counterpart in the creation of a certain imperceptible yet by no means inappreciable bond of Union which does not generally speaking exist between two nations living at a great distance from another." For instance Newzealand could not merge in the Australian Federal system "because the intervening sea more than counterbalanced the aggregating tendencies despite the wish of the fathers of that federation to include that island." If the units are widely separated contact becomes difficult and the desire for Union cannot easily emerge, as the advantages to be obtained do not appear real enough to make the necessary sacrifices worth while. The proposal for a federation of the countries which form part of the British Commonwealth which found some support in the last century fell through because these countries were physically wide apart. In recent years the history of Pakistan since its inception is extremely instructive on the point. The eastern wing of that country is separated from the rest by a vast stretch of land and sea with the result that after achieving independence in 1947, Pakistan could not draw up its constitution before March 1956. And even this constitution broke down largely because of the dissensions between East Pakistan and West Pakistan.

Equally important is a *Community of interests* born of common language, religion, customs, and economic interests as all these factors tend to draw people closer, and forge bonds of unity and fellow feeling. Referring to the importance of common economic interests for fostering the federal spirit Hamilton wrote : "The veins of commerce in every part will be replenished and will acquire additional motion and vigour from a free circulation of the commodities of every part. Commercial enterprise will have much greater scope from the diversity in the productions of the different states." No less important is the political factor which tempts smaller units to form a bigger and more powerful entity with a significant influence in the comity of nations. But it should be emphasised that cultural diversity does not necessarily

1 W. H. Morris-Jones, *Parliament in India*, 1957, p. 7.

rule out the prospects of a federal union. Although linguistic and religious unity favours the formation of a federation, America, Canada and the U. S. S. R. have become federations despite the fact that these countries have a variety of religions, nationalities and languages. In Switzerland there are wide diversities but the sentiment or urge for unity is very much there.

Now, this urge for unity may be regarded as a manifestation of "a common national mind." It is this urge which holds Pakistan together despite all pulls separating East Pakistan from West Pakistan. Unless there is this urge for unity reinforced by a feeling that they would gain, on the whole, by joining in a pool, they would be hardly willing to make any sacrifice in their own liberty of action. The sacrifice is continual and this is sustained only by the strength of the "Common national mind." These sacrifices nourish and keep up common sympathy among the peoples concerned, and support common political and economic institutions which give a form and a shape to the federal idea. Again, this urge for unity will be stronger and clearer if there are no marked inequalities among the component units. As J. S. Mill put it : "If there is any state so much more powerful than the rest as to be capable of varying in strength with many of them combined, it will insist on being master of the joint deliberations: if there be two, they will be irresistible when they agree, and whenever they differ everything will be decided by a struggle for ascendancy between the rivals."[1] This is fully illustrated by the history of the German imperial federation which was vitiated by the predominance of Russia. It is true that this is a counsel of perfection rare in politics. There is hardly any federal state where we can have equality among the units. All that can be done and is done is to minimise inequalities by various constitutional devices *e.g.* equal representation to the federating units in the upper house of the federal legislature, irrespective of their size or population, or a fair representation in the Central Cabinet.[2] This urge for unity will be strengthened, again, if there is a sufficiently high political intelligence among the people of the component states. They must be able to understand the highly complex and legalistic federal relationship—their rights and duties both within their separate states and within the newly created national state. Federalism (derived from latin *foedus* which means agreement) is in the nature of a contract—a legal concept. It is multi-lateral, always written, and it creates a status. A federal constitution is thus a contract between various political units desirous to join in a common partnership retaining their local existence. It thus provides ample opportunity for legal quibblings and easily becomes an intrument for lawyers' use. The continued success of a federation, therefore, demands "a capacity on the part of the

1 J. S. Mill, *Representative Government*, Ch. XVII.

2 Dicey, *Op. Cit.*, p. 139, Dicey also stresses the necessity of approximate equality in wealth. Cf Worsfold, *The Empire on the Anvil*, pp. 35-37.

people to appreciate the meaning of a double allegiance, and the ability to prevent the centrifugal principle of political action from overcoming the centripetal." It also calls forth a developed sense of legalism "a general willingness to yield to the authority of the law courts", which usually act as the arbiters in case of conflicts. The law courts, therefore, have to be extremely vigilant and watchful, for, they have to do the most difficult job of saving local autonomy from the clutches of an ever expanding federal authority. Not only the law courts but it is also essential for a federal legislature to ensure that it can carry out the functions assigned to it and be able to act to meet the needs of the larger community. At the same time it must take account of the interests of the various sections of the new community and of the continuing responsibility of the member states for their fields of government. The Constitution is, of course, the primary safeguard against improper extension of the federal authority. Although the needs and interests of the federation must normally prevail over those of individual states the federation should exercise its powers so as not to impede unnecessarily the use by the member states of the powers they retain.

ROLE AND NATURE OF THE FEDERAL IDEA

A federation, then, is what Marriot calls "Composite State" or Willoughby "a multiple government...[1] From this point of view, the federal doctrine has played as important a part in the development of modern states as the general theory of contract has done in the history of political thought. Indeed, the two doctrines seem to have emerged almost simultaneously in modern times and both served the needs of the modern industrial society. Both are democratic in their assumptions, tone and temper. Both sought to offer the most satisfactory solution of the conflicting interests of peoples in a society and both possess "a potency and resilience which helps nationally and culturally distinct groups to combine for common political ends." Both sought to salvage the individual and the state from the medieval boredom generated by the feudal-ecclesiastical milieu. In the growth of modern state, the federal idea provided the most convenient mechanism to form and work bigger and bigger political unions and a very strong "basis of compromise. . . . permitting political junctions of previous states which are too closely connected by situation, language, and customs to remain apart but which are too unlike in area, local customs etc. to permit of complete amalgamation. The federal idea has helped not only in the integration of countries like the U. S. A., India, and the U. S. S. R. but also supra-national associations like the League of Nations, the Commonwealth of Nations, the Western European Union, the United Nations *etc.*

1 Marriot, *op. cit.*, p. 382. Willoughby *op, cit.*, p. 261, Cf., Finer, *History of Federal Government* pp , 3-4.

The interest of the federal experiment lies in the fact that this form of government is a sort of convention by which several petty states agree to become members of a larger one which they intend to establish. A Federal Government is, therefore, different from international leagues or alliances based on treaties in as much as they do not set up "a common organization to compel action." On the one hand, it is different from virtual unions such as that of England, Scotland and Northern Ireland; and, on the other, it can be distinguished from protectorates (e.g. Uganda and East Africa), Unions of a superior and inferior state (as that of Turkey and Egypt), and personal unions (as that of Norway and Sweden 1815-1905).

Again, a federation is basically different even from confederation. A confederation may be defined as rather a conglomeration of states than a real state as it needs the necessary organs for legislation, government and jurisdiction. It stands half-way between a permanent international alliance and a regularly constitutional form. A confederation is a temporary alliance for some temporary purposes. In a confederation the several states composing it are merely bound together by a sort of treaty relationship, under the terms of which a joint organization is effected for the performance of specified functions delegated to it.[1] On the other hand, a federation is a permanent system. Whereas a confederation is loose and is, at best, a union, a federation is tight and creates a unity because in a federation there is a permanent surrender on the part of the constituent communities of their right to act independently of each other in matters which touch the common interests, and the consequent fusion of these communities in respect of these matters, into a single state.[2] In a confederation the units remain sovereign and, therefore, there remains a plurality of sovereignties. Each member state remains an international person; it may therefore enter into treaty relations with foreign states and may even engage in war with them without involving its associates. If war breaks out between two or more of them it is international war and not civil war.[3] On the contrary, the creation of a federal state annihilates the sovereignty of the component states and creates a new state which alone is sovereign and international person. If a war breaks out among the component states of Federation, it would be a civil war, not an international war.[4]

It follows that whereas in a confederation no new system of law comes into existence, in a federation a new system of Federal law emerges. The federal state possesses a special body of federal law and a special federal jurisprudence in which is expressed the

1 J. Q. Dealey, *The Development of the State*, p. 124.
2 Wilson, *op. cit.*, p. 545.
3 Garner, *op. cit.*, pp. 274-275.
4 Leacock, *op. cit.*, pp. 227-28.

national authority of the compound state.[1] In a confederacy there is no confederate law. Any common regulations adopted by the central body of the confederacy, and binding on the citizens of all the states, are law to any such citizen because adopted as law by his own state.[2] Therefore whereas in a confederation the citizens of every state remain the citizens of that state alone, in a federation a new citizenship is created—that is, it has a double citizenship. Every citizen is at once the citizen of his or her state as well as a citizen of the new Federal State. Moreover in a confederation the component units may retain their own individual forms of government. One may be a monarchy, another an aristocracy, a third a republic. On the other hand, in a federation there should be a common pattern of government in all the federating units. Even in associations such as the Commonwealth, there is a spirit of understanding, a community of interests and ideals. If any partner has fundamental differences with the rest it has no option but to get out. The withdrawal of the union of South Africa in March 1961 (effective from May 1961) is an example. Since the Government of South Africa did not agree to abandon *apartheid*, it was censured by the rest and eventually its Prime Minister withdrew his country's application for continued membership.

A unit of confederations may secede from it, while a federating unit cannot secede from a federation.[3] In such a Union the sovereignty of several states merges into the sovereignty of the totality. They differ, however, in status from provinces for their autonomy is fully safeguarded by constitution and they are given by constitution a determining voice in the federal government (*e.g.* equal representation in the upper chamber and in the amendment and revision of the national constitution. In short, confederation both chronologically and logically is prior to federation since the latter is the more complete form of union.[4] Even in the ancient and medieval phases of history we had instances of confederations as well as federations. While the Achean League, the Lombard League, the Hanseatic League were more of a federation, the Holy Roman Empire and the British Empire have been more of a confederation.

Given favourable conditions, certain units possessing some or all of the characteristics of a sovereign state, and at the same time

1 Wilson, *op. cit.*, p. 545.
2 Leacock, *op. cit.*, p 228.
3 The problems of secession is vital to federalism. The United States had to face that problem in the 19th century and solved it perhaps permanently. In the Soviet Union the Units, however, are free to secede. But as Marriot points out "under the grave circumstance of today the idea of secession is unthinkable", *op. cit*, p. 94. Also refer to A. Carraways', *The Failure of Federation in Australia* (1930) and Marriot's, *Evolution of the British Empire and Commonwealth* (1939). We treat this question towards the close of this Chapter.
4 Dicey, *op. cit.*, pp. 137-139.

having a common interest intense enough to impel them towards a fuller and more lasting union, tend to federate. The factors constituting the common interest are defence and economics as we stated earlier. Common defence can hardly be organized unless all major decisions regarding the armed forces and foreign affairs are entrusted to the federal government. Similarly economic prosperity cannot be achieved unless the power to regulate the economic policy is vested in a single authority. Since economic life is increasingly becoming more and more complex the federal list goes on expanding to include bankruptcy, patents, monopolies and insurance. Referring to this process a critic recently concluded :

"As this process continues each unit becomes more dependent on the whole for its defence and prosperity; no one unit or group of units can withdraw without imperilling the safety and standard of life of the rest. The essential qualities of a sovereign state have been conferred on the Federation; whatever the units may originally have intended, and however much they cling to their special rights, they are no longer sovereign. . . Attempts have been made to distinguish between confederations which admit the right of secession, and federations which do not. But if the term 'confederation' be given this meaning, where are confederations to be found ? . . .The record of history is that. . . . citizenship and allegiance, once created, cannot be destroyed or renounced. . . .A federation, then, is a permanent union of communities so distinct that they might have been sovereign states, so linked by common interest that they have surrendered absolute sovereignty but so conscious of their distinctness that they have made the surrender in a form which protects those separate rights, short of sovereignty itself, which they most cherish."[1]

THE FEDERAL PROCESS

Supremacy of the constitution.—A federation being contractual in conception requires a definite and written constitution. This means that it cannot grow up slowly and imperceptibly out of unconscious change. Here the Constitution is the ultimate authority regarding any differences between the various organs of government or the component states or provinces and the federal government. In this respect, again, the U. S. A. set the pattern. "As the British Parliament has been the mother of Parliaments." Neumann wrote, "so the U. S. has been the father of federation."[2] When the U. S. constitution was on the anvil, very many patterns and schemes were suggested. The final form evolved out of this welter of conflicting suggestions could be made definite and accurate only when it was embodied in a written document. The federating units must invariably be politically conscious and will require to know where they stand and to have some universally

1 Michael Stewart, *op. cit.*, p. 145
2 Neumann, R. G. : *European and Comparative Government*, 1951, p. 601.

accepted statement of the rights of federation and units to which they can appeal in case of later dispute.

From this results what is called the doctrine of the supremacy of the constitution. A federal constitution establishes rights, and obligations, for, not only the states receive protection against each other and against the Federal Government, the citizens also need protection against either set of governmental authority. On this showing a Federal Constitution becomes a charter of rights and duties of the federal and state authorities. These rights and duties must be kept in their proper proportions so that the rights asserted by any one authority, and the duties required of one authority by another, must not be beyond the schedule laid down in the Constitution. It is not the legislature which is supreme and sovereign; it is the constitution which is supreme and limits the legislature. If the constitution is supreme, it must be naturally held above the ordinary law and amendable not by the ordinary law-making procedure but by a special process expressly laid down in the constitution itself. After all, in establishing a new entity, the federating units are parting with some of their powers in return for some common advantages. This arrangement finds a legal shape in the Constitution. It is from this instrument that the units derive all their rights and it is in relation to this that they enjoy their equality of status. These units must, therefore, require that this instrument is not changed except in accordance with the special procedure. This is their major safeguard on which they will naturally insist for without it a bare majority in the whole population could sweep away state rights and impose a unitary form of government.

DIVISION OF POWERS

The Constitution here limits the legislature as it does other organs of government. It does it by a scheme of division of powers. This has led some political theorists to say that in a federal system sovereignty is divided between the centre and the units so that each of them within its own sphere is independent of the other. The special search for sovereignty in a federal system has only academic interest, for, in the ultimate analysis no constitution is infallible. The division of powers does not split sovereignty at all. The people hold the constituent power and nothing can stop them from changing or amending the Constitution including the method of amendment. What is distributed or divided between the centre and the units is merely the legislative or the administrative power. As Professor Carl Friedrich put it : "The fact that such constitutional charters (federal) declare the local units 'sovereign' does not need to disturb the political scientist; we have in such declarations simply a verbal concession to those who might oppose the establishment of the Union—a concession to which nothing real corresponds. In reality, once 'we the people' or some equivalent group has constituted itself the Constituent

power and made a Constitution for the whole from which the territorial subdivisions can no longer secede, we do not have a league or federation of governments *but one single government* (Italics mine), even if it is federative in pattern and its powers consequently divided between a central (national or federal) and local (state) governments."

The division of powers to which we referred is not haphazard. It rests on clearly recognised needs and tangible principles. We have emphasised earlier that the prime historical motive of federalism has been the need of defence. It is, therefore, logical that the centre controls the armed forces. It also implies that foreign affairs must also come within its range, for, as against other states, the Federal State will have to appear as one unit and not as a divided concern. The federal state must also have its own sources of revenue for its finances must be sound to carry on its international activities of peace or war. Thus these three functions—the conduct of war and defence, the control of foreign affairs, and the power to raise money are the prime essentials without which no federal state can exist. Then come those functions which demand uniformity of legislation and supervision and they may be stated to be the control of coinage, the regulation of patents and copyrights and the conduct of the postal services. In addition to those three are those functions, which do not demand uniformity absolutely but which do contribute to the 'national progress' *e.g.* the control of railroads, canals, telegraphs *etc.*

Then there are those subjects which may be placed with either government—federal or each of the component units—according to the prevailing opinion, situation or circumstance *e.g.* the regulation of marriage and divorce. Finally, there are subjects of local importance and are left to the local units for administration. *e.g.* Public works and public charities. Now these powers may be distributed in at least three ways. First, it may be specifically stated that the Central or Federal Government would exercise enumerated powers and that the remaining powers shall be exercised by the state or provincial governments. This residuary power or the reserve of powers in this case belongs to the constituent states as in the U. S. Secondly, the subjects that are allotted to the states or provincial governments may be definitely enumerated and the reserve of powers may be granted to the Federal Government as in Canada. Thirdly, the powers of both the Federal and State governments may be specifically enumerated and those subjects too may be enumerated where they would exercise concurrent jurisdiction. In the sphere of concurrent jurisdiction where a conflict between the laws of Federal Government and the governments of units may arise, the law of the former is to prevail as in India. In India, again, the federal legislature can increase its powers without much difficulty. It is true that the principle of concurrent jurisdicion obtains in the U. S. A. but it is to a much lesser extent. "Most of the powers granted to the Congress

are forbidden to commonwealth but in some matters such as bankruptcy laws, they may act in the absence of federal legislation. In Australia, the powers of the federal government have been laid down in great detail but only a few of the powers are expressly declared as exclusive and in many cases the state government may act where the federal government has not done so. It is there that concurrent jurisdiction comes in, and in all cases of conflict the constitution lays down that "When the law of the state is incompatible with the law of the commonwealth, the latter shall prevail."

Now, a student of political science may be warned against falling into the error of overrating either the concurrent jurisdiction or the allocation of the residual powers. With regard to the former, he would be on safe ground if he keeps his grip on the actual legislative field covered by the centre and the units. With regard to the latter, he must remember that the more markedly federal nature depends not on the mere fact that the residue is allotted to the units, but on the content of that residue. If every care is taken to mention every conceivable power (as in India) very little will be left of the reserve of power. And, then, much depends on the view taken by those sitting in the law chambers.

It is, of course, desirable if the pattern of distribution of powers conforms to the capacity of the units for shouldering responsibilities. But this has nowhere been achieved for reasons into which we need not go. It is enough to note that nothing very much can be done to eliminate the real inequality of strength and capacity prevailing among the federating units so as to enable them to maintain comparable standards of administration. At best some sources of taxation may be vested in all units of federation but their usefulness or productivity will vary in accordance with the size, volume of resources and economic prosperity of the state concerned. This is bound to result in a palpable unevenness in the standards of administration which may well weaken the basis of the federal system unless something concrete is done to bring about financial equality among states. This can be done if the Federal Government has the resources to permit a regular flow of funds in aid of the state revenues and has comprehensive financial powers irrespective of the pattern of distribution of legislative powers. In fact, all federal governments have these powers. In many cases, there is the additional device of "joint sources of revenue", the shares of which are determined by autonomous bodies like the Federal Grants Commission of Australia or the Finance Commission of India. In India, the whole section of the Constitution from Article 269 to 282 is based on the idea that the States would require central assistance in the form of subventions and grants to balance their revenue budgets in several ways. First, income tax is to be compulsorily shared between the Centre and the States and the sharing is to be done through a presidential order based on the recommendations of

the Finance Commission. Secondly, the Union is empowered to share the proceeds of excise duties which are constitutionally exclusive Central taxes, and here the sharing has to be done by law of Parliament. Article 272 does not directly provide that the Finance Commission should make any recommendation in this regard. But under Article 280 the Commission is obliged to make recommendations not only on taxes which "are to be shared"—income tax—but also on taxes which "may be shared"—excise duties. Thirdly, Article 269 lists seven taxes whose proceeds are assigned exclusively to the States but the levy and collection of which has to be done by the Union Government. They are to be distributed to the various States in accordance with such principles of distribution as may be formulated by Parliament by law. Fourthly, stamp duties levied by the Union and excise duties on medicinal and toilet preparations containing alcohol are to be levied by the Union, but collection and appropriation are made directly by the States. Finally article 275 provides for grants-in-aid to be given by the Centre to the needy States. These grants may be determined by law of Parliament, but till such a law is enacted, it is to be given by a presidential order based on the recommendation of the Finance Commission.

What is important here is that these are not the only methods of central assistance to the States and the Finance Commission is not the sole instrument of deciding the amount of such assistance and its distribution among the States. Planning has introduced 2 additional factors which a student of Indian federalism must carefully note. First, the loans. While the Union is empowered to give loans to States and to give guarantees for loans raised by them it was contemplated that this would only be marginal and supplementary provision. The States were supposed to finance their capital needs normally by their borrowings from the public. Before 1951-52 the total amount of loans to the State was small but in the following years the Centre became the main source of Capital for the States. From Rs. 60.78 crores in 1951-52, the capital assistance increased to Rs. 249.42 crores in 1955-56, the last year of the First Plan. In 1956-57 the Centre gave Rs. 201.39 crores in loans and it went on increasing till it reached Rs. 331.57 crores in the budget estimates of 1960-61. Deducting repayments, a net total of Rs. 637.87 crores was given as loans in the First Plan and they added upto Rs. 1032.5 crores in the second. The States are expected to start the Fourth Plan with a net liability to the centre of the formidable total of Rs. 3800 crores.

The second factor was introduced by planning in the Indian federal finance under Art. 282 of our Constitution. Art. 282 empowers the Union generally to make grants for any public purpose. Now, this could not have been intended to make large-scale grants to the States bypassing the Finance Commission. In practice, however, this happened. This article has been used

to such an extent that grants under it have almost been equal to the subventions and grants based on the recommendations of the Finance Commission. These have generally taken the form of specific matching grants for the promotion of particular schemes in agriculture, health, education etc. The Second Finance Commission, indeed, pointed out that under the present conditions matching grants have no meaning as a considerable part of the State's revenues already consist of Central subventions and grants.

All this naturally has a bearing on the administrative relations between the Centre and the Units. Administration is a consequence of legislation and finance. Without a machinery for executing laws, laws are meaningless; without finance the machinery cannot operate and finance is voted by Parliament. In a federation legislative power is distributed; money is also distributed; and, therefore, allocation of executive power is vital and both the federation and the units need to possess their own law courts, police and administrative officials. In the U. S. A. and in Australia federal laws are enforced by federal Courts and police, and State laws by State courts and police. In the U. S. A. the Centre has , of course, the power of coming to the aid of the States in times of need and in case of arbitrary intervention, the States could threaten secession until the issue was decided by the Civil War. Today, therefore, "a state might chafe under federal interference or seek the assistance of the Supreme Court but cannot make use of any other remedy." The Centre also intervened under Article IV. President Cleveland in 1894, for example, intervened with force in the Pullman strike in Chicago. Roosevelt applied pressures through grants-in-aid. Thus the Centre can impose its own standards of administration on the states and the latter have very little choice in the matter. As one writer put it : "The choice before the States is that of participating in the administration of national standards imposed by the federal government or submitting to federal encroachments of those standards."[1]

In Germany there are elaborate arrangements for sharing or delegating law enforcement. Distribution of legislative power has not been followed here by separation of the administrative machinery. Both under the Weimar Constitution and the Bonn Basic Law, the Lander have had a wide range of respons bility for implementing federal laws. In India, State Courts deal with Federal and State law but are subject to more supervision by the supreme Court than is found elsewhere. The Union administers matters pertaining to the Union List; the States, with regard to the State List. In respect of the Concurrent list, the Union and the State Governments have parallel sets of administration and in some cases even the laws of the Union are administered by the State Governments. In respect of certain matters falling

1 Miss Jane P. Clark. Joint Activiy between the Federal and State Officials. *Political Science Quarterly* No. 4, 1936.

passed (1960) by the Parliament to implement the Nehru-Noon Agreement of 1958.

Thus seen, the general tendency in federal states becomes clear. In one word there is a tendency towards integration, to entrust the centre with wider and wider authority. This is partly due to the fact that the units of the federation once brought into contact begin to grow together and knit into a more and more united body. A feeling of patriotism develops and particularism merges into it. Switzerland is a classical example of this trend. In some states the force of ideology serves as a great cementing force both horizontally as well as vertically. The Soviet Union is an illustration of this. In a country like India the sheer need of economic development generates a desire to pull together and shift more and more powers to the centre. The Directive Principles of State Policy in chapter 4 of the Constitution of India unfold the social and economic contents of this patriotism and integration. The fear of Pakistan since 1947 and the greater fear of China since 1959 is another ingredient in the process of integration. In the U. S. A. the real or imaginary fear of the U. S. S. R. today is a powerful force behind patriotism. Again, there is the impact of material environment. The fact that present technology has rendered more and more issues nationwide implies that in one area after another the local governments will be supplanted by the national authorities. Rapid transportation, the telegraph and the evolution of production and commerce has already broken down the economic barriers that once existed. The atomic revolution of our times accelerated the process of centralization. Modern life has become so complex that a small unit cannot administer any subject single-handed. This results in an integral relationship of various subjects—an idea underlying the doctrine of Implied powers. As Marshall C. J. put it : "A power vested carries with it all those incidental powers which are necessary to its complete and efficient execution." Through the gradually widening interpretation of the federal Constitution and the use of devices such as federal grants of funds to states, the national government tends to absorb more and more state functions. The tense world situation creates a war psychosis and results in the overemphasis on defence which again leads to centralized production and control. These trends, it seems, have mutilated the basic purpose of the doctrine of federalism which as we suggested earlier was the counterpart of the contract theory. Just as the contract theory was intended to rationalize limited government, federalism also was a method to achieve the same results. For the American colonies federalism as well as separation of powers were methods to set up Constitutional government. Supremacy of the Constitution, as one scholar has put it, begets a consciousness among all organs of government that these powers are neither permanent nor unlimited. We can only add that this consciousness does not remain confined merely to "all organs of government" in a horizontal source; it spreads vertically also—both at the centre

and in the units. If "limited government involves both territorial and functional devolution of powers, federalism combines both."

Now, government has to be limited if it is to be democratic. In a federal state, therefore, there has to be decentralization, if not necessarily separation of powers. But government has to be efficient if it has to function. The need for efficiency is greater today than ever. And what is more, efficient government today does not mean either functional decentralisation or territorial. It means central control over the units, and organic unity of the government. The former negatives territorial decentralization; the latter, functional. This, of course, does not mean that federalism is dead today. It only means that as a political theory born of the marriage of Industrial and American Revolutions classical federalism has grown out of date. It has to be reassessed. It is very useful even today and can be made more useful to-morrow. But its pattern and values have to be reevaluated. And this reevaluation would frankly mean "an overdose of centralism". Without this "overdose" federalism would soon become an anachronism. This "overdose" need not frighten anybody seriously concerned with democratic values. Witness the readiness of the most genuine democrat to suspend the Civil liberties of people whenever they believe democracy is in danger, or witness again, the eclat with which they can throw private enterprise to dogs by espousing monopolies and combines, whenever they believe that a neighbour is progressing at an alarming rate. In the same way, if in a federal state things are normal, the centre would scrupulously respect the state rights, but it would be compelled to disregard them in face of common danger.[1]

In [illegible] federal states. The centre [illegible] the will or the resources to [illegible] It might have been done [illegible] as done and that is important. A few general circumstances have actually helped this process of Central intervention. The party system, for example, can be cited as one such circumstance. In India, the Congress Party has dominated all the States and this single political fact wiped out state boundaries for political purposes and gave unprecedented powers, for good or for bad, to the Centre. Another notable circumstance is that of a Parliamentary system within which federalism operates in India. The Cabinet in India, responsible to the Indian Parliament consists of responsible leaders who are front-rank politicians of different states. This fact confers upon the Central Cabinet an authority which would enable them easily to dominate the state affairs. In the U. S. A., federalism operates within the framework of Presidential government which does not establish that sort of cabinet which can function as a national commission. But there the President can dominate over

[1] Cf, K. B Smellie, *Our Two Democracies at Work*, 1944. p. 58. Here he examines the effect of the Great Depression on federal state relations in U.S.A.

the States by wielding his constitutional authority and power, his political leadership, and the party apparatus.

JUDICIAL REVIEW

In the foregoing we stressed the need of a sound distribution of powers in the federal system. Now, the governmental powers must not only be satisfactorily distributed between the Centre and the Units, but provision must be made to prevent them from encroaching upon a sphere allotted to the other. The most important safeguard is the establishment of an independent court of law to interpret the constitution and decide conflicts of jurisdiction amongst the units or between the centre and the units. It is only from this point of view that the theory of Separation of Powers may be said to have a bearing on the federal principle. For the rest, all that can be said is that though it may assist the working of federal government in some cases, it is not essential to it. It only weakens government and a weak government is sometime welcome to the units which form a federal union. In India, U. S. A. and Australia we have Courts to do this job; in Switzerland and in the U. S. S. R. for different reasons, the federal law cannot be declared void by the Courts. In Switzerland, people as a whole are associated with law-making and over their express will no court can have superseding powers. The power to declare federal laws *ultra vires*, is vested in the Swiss legislature. Cantonal laws can be declared void by the courts. In Russia law-making is practically the party affair and the Party possesses the sovereign power over the policies on which no court can sit in judgment. Thus in Switzerland and the U. S. S. R. one might say that the judicial safeguard is ineffective as a means of protecting the rights of the units. In Canada, apart from the judiciary, the Governor-General also has the authority of declaring provincial laws *ultra vires*.

How does the judiciary act as a safeguard of the federal principle ? It does it by keeping up the balance between the various powers and by thus guarding and protecting the ethos of the Constitution.[1] The judiciary is independent of the control by the Legislature and the Executive and functions as a bulwark of individual freedom against the tyranny of the Executive or the Legislature. In this sense the Court in the U. S A. has a glorious position as the guardian of rights. On the one hand, the Courts of law can declare an act of the American Congress, if in their [illegible] lividual, as ultra vires and [illegible] Congress, can regulate or [illegible] emergency or peril to the state.[2] It is the Supreme Court and not the Congress which is

1 C. F. Strong, *Modern Constitutions*, pp. 101-102. Watson, *op. cit*, p. 566. W. W. Willoughby, *op. cit*, pp. 6-10.

2 M. G. Gupta, ed, *Aspects of Indian Constitution*, pp. 122-123; 126-127.

supreme in relation to the fundamental rights. On the ground of state security, the Congress cannot curtail the scope of individual rights. Under the so-called doctrine of Police power, the Courts do acknowledge the power of the Congress to limit rights in the interest of the State, but the exercise of this power has to be proper and according to the due process of law, and whether in a given case it has been so, is a matter which can be decided by the Supreme Court alone. In short, the Constitution is what the Supreme Court says it is. Nor can the Congress amend the Fundamental Rights. The citizen, moreover, has unenumerated rights under the 9th Amendment according to which the enumeration of certain rights shall not be constituted to deny or disparage others retained by the people. In India, the position is different. There are no unenumerated rights. The fundamental rights are not only not protected from the special procedure of amendment laid down in the Proviso to Art.368 but can be suspended during the Proclamation of Emergency.[1] They are, furthermore, limited. In some cases, the limitations are imposed by the Constitution itself.[2] In others, Parliament has been given the power to impose further restrictions, and in doing so, to confer authority on the executive to carry its purpose into effect. But in every case it is the rights which are fundamental, not the limitations, and it is the sacred duty of the Courts to guard and defend these rights within their limitations. No person, in India, can be deprived of his life or liberty "except according to the procedure established by law." Once the legislature lays down a procedure, the courts cannot declare void an enactment on the ground that the procedure was against the principles of natural justice. Chief Justice Kania defined the limits of judicial review in India : "It is only in express Constitutional provisions limiting legislative power and controlling the temporary will of a majority by a permanent and paramount law settled by the deliberate wisdom of the nation that one can find a safe and solid ground for the authority of courts of Justice to declare void any legislative enactment. Any assumption of authority beyond this would be to place in the hands of the judiciary powers too great and too indefinite either for its own security or the protection of private rights."[3]

But in a federation the Judiciary not only safeguards fundamental freedom by interpreting the law of the legislature, it also safeguards the federal principle by examining whether a legislature had the power to make a given law. A legislature here has the power to legislate within the limits prescribed by the Constitution and it is the duty of the Courts to see whether the legislatures have kept within these limits. Here, again, the judiciary protects the balance of power between the Executive and the Legislature and between the Centre and the units. This problem,

1 Arts. 358 and 359.
2 *Constituent Assembly Debates.* Vol. VII, No. 1, 4th Nov. 1948, p. 41.
3 *Gopalan* v. *State of Madras*, 1950, S. C. R. 27.

as we stated earlier, does not arise in Switzerland and in the U. S. S. R. In other countries this particular role of the judiciary would largely be determined by the content and size of the Constitution. If, as in the U. S. A., the Constitution is brief and the task of the Court comparatively simpler and more unfettered. The U. S. Constitution has been adaptable and has not been allergic to judicial interpretation. Substantial questions arose and were answered by the Courts, questions involving the Negro issue, tax on newspapers, or freedom of speech. In answering these questions the Court has had to apply to present problems words written 100 or 200 years earlier. But there are clear limits to the extent to which Courts can stretch old words to meet new problems, and when these limits are reached, further changes can be effected only by amending the Constitution. "The U.S. Supreme Court", it has been well said, "could not, by itself, have enfranchised negroes or women, or established or abolished the prohibition of intoxicating liquors."

Now if there are limits to the capacity of the Courts to introduce social changes in countries like the U. S. A. where the whole Constitution can be read in about 20 minutes, what shall we say about states such as India where the Constitution is very much detailed and where, therefore, there is less room for judicial argument ? The greater the detail in a Constitution, the greater is the rigidity involved in its meaning and lesser will be the scope for the judiciary to lend it a new meaning. If this reasoning is correct, then obviously resort is to be had to some other device in order to keep the Constitution drafted say in 1950 in tune with the problems of say 1960 or 1970. The idea upon which a Constitution is based in one generation "may be spurned as old-fashioned in the next." Courts after all are not supposed to make or alter law, but simply to declare it. The Courts declare what the Constitution is on a particular point at a given time. If the people, having learnt from the Courts what the Constitution is, do not like it, they are certainly the final arbiters. They are the political masters and they have the pre-natal and the post-natal control over the fundamental law of the land. By acting in the prescribed manner they can alter the Constitution from what it is to what they think it ought to be. The Courts, in the process of declaring what the Constitution is on a given point may inject or read a new meaning into it today and discard it tomorrow. There are always what K. C. Wheare has called "ebbs and flows in the tide of judicial opinion." The history of Canada and the U. S. A. amply illustrates this. In 1923 the U. S. Supreme Court declared invalid a Minimum Wage Act passed by Congress for the District of Columbia on the ground that "it interfered unduly with freedom of contract contrary to the 5th Amendment of the Constitution which had provided that Congress had no power to deprive a person of life, liberty or property contrary to due process of law." Freedom to buy and sell labour unrestricted by law was held to be a part of the notion of liberty. This decision

was overruled by the Court in 1957 and a different view of liberty was taken. "The liberty which the Constitution safeguards", it said, "is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people." Similar trend is noticeable in India also. In the United Motors Ltd. and others *vs.* Bombay the Supreme Court held that the State had a right to impose Sales Tax on out-of-state dealers for goods delivered in the State for consumption therein. But in Behar *vs.* the Bengal Imm Co. the Court held that the State had no such power. The usefulness or otherwise of the judicial function would then depend on the way the courts adapt the constitution to the needs of the time. What is important for a student is to realize that there are clear limits beyond which the Courts cannot go. The Courts cannot afford to embrace the exhilarating opportunity of anticipating a doctrine which may be in the womb of time but whose birth is distant. Courts may adapt but as K.C. Wheare points out, they cannot amend. "They may follow common sense, but they may not follow mere expediency. They may have opinions but they may not be partisans. They may choose to treat a Constitution as a living instrument, but they must treat it first of all as a constitution. And, although it may be wise for a Court to give the legislature the benefit of the doubt, where there is a doubt, it is no part of the Courts' duty to do for a legislature or for a majority of the electors what a Constitution has not done for them. . . .They have a discretion, but it is a discretion within the law and not above the law."

AMENDMENT

In all such cases, then, where the people want to change the constitution from what the Courts have declared it to be, they will act in the prescribed manner. In India, for example, the Constitution was amended for the fourth time in 1955 after the Supreme Court's judgment in Dwarika Das Shrinivas vs. Sholapore Spinning and Weaving Co. was delivered.[1] The prescribed methods of amendment are the direct results of having a written constitution and will appear, whether, the form is unitary or federal, in all cases of written constitutions. But in the case of federal constitutions, the prescribed methods are particularly important and play a very large part in politics. The reason is obvious. In federations the Constitution is not me[illegible] the whole body of citizens, it is also [illegible] the federating units with conflictin[illegible] terests. The Constitution is in the nature of a contract establishing a new power relationship and representing a delicate equilibrium of centrifugal and centripetal political forces. And since it has been drafted to conciliate groups with divergent interests

1 M. G. Gupta, *op. cit*, pp. 138-140.

"it may well contain phrases of doubtful meaning which were found acceptable because each group placed its own interpretation on them." To the extent to which judicial interpretation continues to satisfy the parties, no formal amendment is called for. But once this is found to be inadequate resort has to be taken to amendment. The process of amendment, in theory, must involve the participation of the federating units. This, at any rate, is the position in the classical theory of federalism, and political practice in most of the federal states conforms to this principle. In Switzerland, the amendment requires always the consent of a majority of the electors voting in a referendum and of a majority of the electors voting in a majority of the cantons; and on some occasions the consent of the Swiss Legislature also. In Australia, the method of amendment is substantially similar to this. In the U. S. A. amendments may be proposed either by ⅔rds of both houses of Congress, or by a convention called together by Congress on the application of the legislatures of ⅔rds of the States. The amendments are valid only when ratified by the legislatures of 3/4 ths of the states or by conventions in 3/4th of the states, according as one or other method of ratification may be proposed by Congress. In Canada, the Constitution can be amended by the Parliament of the U. K. with the consent of the Canadian Parliament. But any amendment to which either Quebec or Ontario objected would never be pursued. In Russia, an amendment must be passed separately by a ⅔rds majority in each chamber of the Supreme Soviet of the U. S. S R. In case the two chambers do not agree over an amendment, or an amendment fails to secure the requisite majority in either of the chambers it is referred to a conciliation commission formed by the Supreme Soviet. In case the conciliation commission fails to resolve the deadlock, the amendment is discussed a second time in each chamber. And if deadlock persists, the Presidium of the Supreme Soviet dissolves the Supreme Soviet and holds fresh elections. The newly elected Supreme Soviet will then finally decide the issue. This procedure, in practice, has never been used and amendments here have been made quite easily on the recommendations of the C. P. S. U.

In India, the Constitution, as stated earlier, is very detailed. Some provisions can be amended by simple majority and these usually begin with the phrase "until Parliament, otherwise provides." In some cases (very few) the State Legislatures can modify Constitutional provisions. The Parliament has the power to admit into the Union or establish new states on such terms as it thinks fit,[1] and may by law form a new state by uniting two or more states, may increase or diminish the area of any state and may also alter the boundaries or name of any state.[2] The Fifth Amendment (1955) added the provision that no bill for this purpose shall be introduced in either House of Parliament except

1 Art. 2.
2 Art. 3.

on the recommendation of the President, and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired. These provisions clearly indicate a weakness of the States against the Union. The procedure of amendment is laid down in Art. 368. According to it, a Constitutional amendment requires a majority of the total membership in each House of Parliament and a majority of not less than ⅔rds of the members present and voting. "This means", Jennings writes, "that ⅓rds of either House can defeat a Constitutional amendment by voting against it. If one-quarter votes against and one-quarter abstains from voting the amendment is again obstructed."[1] Again, if the amendment seeks to change the executive powers of the States or of the Union, method of election of the Union President, the provisions relating to the High Courts for Union Territories, the Union Judiciary, the State High Courts, the legislative relations between the Union and the State, the representation of States in Parliament, or the procedure of Art. 368 itself, the amendment act is required to be ratified by the Legislatures of not less than one-half of the states by resolutions to that effect passed by those Legislatures before the Bill is presented to the President for assent. The Constitution is silent on what is likely to happen if the President were to refuse his assent in either case.

Now it is argued sometimes that in federal constitutions the difficulty of the amendment procedure makes the constitution rigid in the literal sense. In the case of Canada, a single province can veto the proposal for amendment. In the U. S. A. thirteen states with a combined population less than that of the single state of New York can prevent the remaining thirty-seven states from realizing their will. In India, 8 states with about 35% of the entire population can veto a bill desired by the remaining 7 with 65% of the population. Similar calculations can be made for Switzerland and Australia. In practice, these apprehensions have not meant anything really serious. In Switzerland, from 1874 to 1952, 99 Constitutional plebiscites were held of which 47 were held at the instance of the legislatures, 42 were initiated by the voters, and ten were caused by the disagreement between the voters' initiative and the Swiss Parliament. Of the first category 37 were accepted by the people; of the second category 7 were approved; and of the third, 8 were carried. Thus of 99 proposals, 52 were passed—a really high proportion keeping in view the so-called rigidity of the amending process. In Australia, from 1901 to 1953, 12 referenda were held and from these four amendments were carried by the requisite majority of all electors voting and of a

[1] *Some characteristics of the Indian Constitution*, p. 12.

majority of electors in a majority of states. In the U. S. A. 23 amendments have been made and only 6 proposed by the Congress have not been accepted. In Canada, 12 amendments have so far been made and of these only one related to the division of powers. In India, despite what Jennings called "a somewhat complicated process of amendment" and a very rigid Constitution, there have been 16 amendments in the Constitution in about 14 years. In the Soviet Union the amendment can be effected as swiftly as one can pluck a flower. In Germany, neither the Weimar constitution nor the Bonn Basic Law provided for the ratification of the amendment act by the Lander.

Thus seen, the participation of the federating units in the amending process has not led to any adverse results and has not come in the way of flexibility or adaptability. Nor can it be seriously argued that state's participation is no longer accepted as a federal feature. It is difficult to agree with the view expressed by Mr. A. W. Macmahon that "it is not indispensable to the principle of federal equilibrium that amendments be submitted to the authorities of member-states or to their electorates or to the electorate of the Union or to a Constituent Assembly."[1] The way the amending power is used is the key to the working of a federal system. If a federation is a device intended to reconcile the demand for national unity with the desire for local autonomy, the terms of the contract should not be changed to tilt the scales either in favour of the one or of the other unilaterally. Amendment by special majorities is always better than by bare majorities and in federal societies which are plural, regional majorities are always an important factor. As K. C. Wheare put it : "For one thing, federal government is based upon the principle that government by a bare majority of the people is not the only way in which to govern well and in some cases is equivalent to bad government. Majorities of regions have a significance which majorities of people have not, two-thirds and three-quarters majorities have a significance which bare majorities have not. There is, of course, no special magic in these figures. . . . . But a combination of these types of majorities may produce a result in a federal government which is wiser than that provided by a simple majority of people.

USAGES AND CONVENTIONS

As in other types of government, in federal states also conventions and customs operate upon the political practice. The letter of the Constitutional law may remain unchanged; the practice may be regulated by conventions unknown to the Constitution. It is true that the division of powers between the Centre and the Units cannot be altered by Conventions but "they may nullify certain legal powers by making it constitutionally improper to

1 *Encyclopaedia of Social Sciences*, Vol. VI "Federations".
2 K. C. Wheare, *op. cit.*, pp. 228.

exercise them, and in this way actually restrict in practice the extent of the powers of general or regional governments." They may even establish procedures requiring certain consents or consultations before a power is actually exercised, thus affecting the extent of the power somewhat, though in law the power may be still exercised according to the original scheme. In Canada, the Centre's power to disallow the provincial acts by convention is very sparingly used and from 1900 to 1939 only 35 acts were disallowed. Provincial budgets, by convention again, are not vetoed by the Centre. The whole procedure of the amendment of the Constitution is regulated by conventions. In the U. S. A., as in Canada, Australia and India, different regions, by convention, are represented in the Cabinet. In Switzerland, by convention, the two biggest German-speaking Cantons, Zurich and Bern, the French-speaking Canton Vaud, and the Italian-speaking Ticino have permanent representation in the Federal Council. Again, Conventions have it that the Federal Councillors may be re-elected so long as they desire to serve. In the U. S. A., the vital Senate Committee on Foreign Relations is a creation of convention and the purpose clearly was to enable the opinions of the States to be expressed. In India, the appointment of judges in the State High Courts is regulated by conventions. The Home Minister of the Government of India admitted in the Rajya Sabha the helplessness of the Centre on the question of the appointment of "outsiders as judges".[1] He stated that by convention "the proposals should emanate from the Chief Justice of the High Court where the vacancies had to be filled. The Chief Justice had to pass it on to the Chief Minister concerned and then to the Governor. The correspondence was then sent to the Chief Justice of India who forwarded it to the Government of India with his own views. The appointments were then made. This had made it difficult for the Centre to impose anyone whom they liked."[2] There is, again, the Foreign Affairs Committee of the Parliament which is based on convention.

Now, all these examples would indicate that conventions have tended to limit the Centre by providing for new procedures in accordance with which the powers of the Centre may be exercised. But there are conventions, which limit the legal powers of the States also. Conventions have, for example, completely changed the method of election of the U. S. President. In Australia, the working of the Cabinet government has almost eclipsed the Senate which was supposed to safeguard the rights of the states. In India also conventions tend to relegate the Rajya Sabha in the background. Finally, there are conventions which regulate inter-governmental co-operation in federal states. In

1 The Home Minister was asked why the Government of India had not given effect to the S. R. C. recommendation accepted by them that one-third of the Judges of a High Court should be from outside the State.

2 *Northern India Patrika*, December 7, 1960, p. 5.

India, the Prime Minister sends secret circular to Chief Ministers, and Governors of States, and this has been done even when Chief Ministers have been from parties other than the Congress Party Conferences of Speakers, Law Ministers, Ministers for Education, and Governors are held regularly. Important documents relating to foreign affairs are circulated amongst the Governors. In the U. S. A., the Governor's Conference has become an annual feature. In Australia the Provincial Premiers have met regularly every year and in Canada there is not only the Dominion Provincial Conference but also the Inter-Provincial Conference. The effectiveness of these agencies would, of course, vary. Much depends on personal equations. A Chief Minister like the late Pandit G. B. Pant (later, the Union Home Minister) or C. R. Rajgopalachari would exert more influence than Sri Krishna Mehtab or the late Ravi Shankar Shukla. The opinion of a Governor like V.V. Giri would command greater respect than that of a man like K. M. Munshi. It also depends on the importance of a state a man represents. U. P. might be more important than M. P. and Assam more than Bihar. It also depends on the issues, the Centre has to face. The Governors conference in the U. S. A. has so far not achieved as effective cooperation as the Canadian Dominion-Provincial Conference has done.

BICAMERALISM IN FEDERAL STATES

Among the safeguards of State autonomy in federal states bi-cameralism is regarded as one of the most important, other safeguards being an impartial judiciary to interpret the Constitution, and the participation of state in the process of amendment. It has been often suggested that a bicameral legislature is not essential in federalism. As Mr. A. W. Macmahon put it : "There is probably a growing need in all federations for consultation with State authorities but the mechanism of association and conference are not dependent on bicameralism."[1] Bicameralism, in fact, can nowhere be defended as indispensable. A second chamber in no country can be said to be absolutely essential, though it can be said to be useful. Bicameralism, thus, in the federal context raises three issues : one, is it absolutely essential for the federal principle ? Second, if it is to be there, is it to provide equal representation to the Units ? And third, what powers are to be assigned to it ?

One view is that the federal legislature must be bicameral in as much as federalism reconciles two opposite principles of unity and autonomy of units and each of those has to be represented in the legislature. If the lower house represents the principle of unity and thus gives representation to the people as a whole, the upper house may embody the idea of the autonomy of the Units and allow representation to them. Thus historically speaking,

1 A. W. Macmahon, *op. cit*, Vol. VI.

where a national state is formed (as were the U. S. A., Germany, and Switzerland) out of states or "cantons" which were previously sovereign and independent, a bicameral parliament is adopted as a means of representing state or local interests in the upper house and national interests in the lower, and of achieving balance and harmony between these interests. The other view is that bicameral legislature is not essential in a federal state. In actual practice in most of the Federal States—U. S. A., Canada, India, Australia, the U. S. S. R., Brazil, Mexico, West Germany, Yugoslavia and Switzerland—legislatures are bicameral. In the Constitution of Pakistan abrogated by Ayub Khan the legislature was to be Unicameral (Art. 43). But the National Assembly was to consist of 300 members one half of whom were to be elected by Constituencies in East Pakistan, and the other half by Constituencies in West Pakistan (Art. 44). In this case, the federal principle of equality of representation of the Units on which upper houses are usually constituted was accepted in the Constitution of the Unicameral National Assembly itself. In fact, bicameralism though not essential, is very desirable in a federal state, for it makes things simpler and easier.

But are the federal units to be equally represented in it? On this question practice is not uniform though according to one view the Second Chamber in federal states should be so constructed as to give the *smaller* units a *greater* voice than size of population alone would justify. In the U. S. A., Australia and Switzerland each unit is equally represented in the upper house, each unit sending 2, 10 and 2 deputies respectively. In Canada, Germany and India, the representation is unequal, but except in the case of India, not in direct proportion to the population of each unit. In India, the allocation of seats among the different States and the Union territories has been made on the basis of the population of each State and each territory as ascertained from the latest census figures. In the case of the States having a population of not more than 5 millions, the number of seats allotted to each state was determined according to the formula, one seat per million. In order that States having a population of over 5 millions may not get unduly large representation, this formula was modified so that in the case of such states the number of seats allotted to each state was determined according to the formula, one seat per million for the first 5 millions and one seat for every additional 2 millions or part thereof exceeding one million. In the case of Union territories a little weightage has been given as they are smaller both in area and population as compared with the States. [illegible] the U. S. S. R. there is equality of representation in each [illegible] gory of unequal units—each Union Republic [illegible] Autonomous Republic 11, each Autonomous [illegible] National Area 1 deputy to the Council of [illegible] retically again, while equality of represen[illegible] to be absolutely essential, it is definitely [illegible] efficient and effective working of the [illegible]

K. C. Wheare writes, "may be reluctant to enter a federal Union unless they are guaranteed some safeguard in one house of the legislature against their being swamped by the more populous members of the Union. This is especially true of agricultural states or states of small extent. Equal representation in the Senate gives some sort of security to the smaller states that the powers which have been handed over exclusively to the federal government will not be exercised as a general rule in the interests of a few states. Unless there is this feeling of security and unless there are the checks and obstructions which such a second chamber provides, it may be impossible to initiate a federation or to work it successfully. . . . Majority rule, where it means a majority of people and not a majority of regions, may not be so satisfactory a method of obtaining decisions in a Federation as it can be in a Unitary State. Some additional protection against the tyranny of such majorities may be needed, and it was for this reason that the method of equal representation in an upper house was adopted."[1]

Then, there is the problem of the powers and functions to be assigned to a Second Chamber in Federal States. The Second Chambers, in practice, tend to be usually conservative and are, therefore, usually given a secondary position. They have, by and large, very limited powers over money, a restricted power of delaying legislation and they get outnumbered in case an issue is to be decided in a joint sitting of the two houses. It would thus appear that if the function of the second chamber in federal states is really to safeguard the interests of the federating units, they, in practice, are hardly qualified to do it. The American Senate is an exception. It has special powers of ratifying appointments and treaty. "It has equal powers in law and greater influence in fact." One reason seems to be that a federation so large and varied could not exist without conciliating its units by giving this special position to the House which represents them equally and which guards their rights. But more important has been the factor of the theory of Separation of Powers and Presidential type of government. In Canada as in Australia and India, the Second Chambers do not have any special powers and in India under the Constitution , the Council of States has clearly a subordinate position. But in all these cases the most vital factor weaker [illegible] has been that of Parliamen[illegible]

Under this system [illegible]

which means to the Lower House which is popularly constituted. The Lower House, therefore, becomes the Centre of gravity and real political battles involving the fate of the ministries are fought here. On the contrary, the American President and his Cabinet are not responsible to either house of the Congress in this sense and the Senate, therefore, has not to suffer in glamour, influence or

1 K. C. Wheare, *Op. cit*, pp. 93-94.

prestige on that account. In Switzerland, the two houses of the National Assembly enjoy absolutely co-equal powers and any observer from a distance may jump at the conclusion that the Swiss Council of States is "neither a federal chamber nor even a Second Chamber." Keen observers have, however, pointed out that the National Council has a greater prestige if only because the tenure of the members of the Council of States being dependent on the Cantonal Constitutions is shorter than that of the members of the National Council. In Switzerland, in fact, the Legislature plays a less important role than elsewhere, thanks to referendum and initiative. But, in any case, the upper house here is "more effective" than the Australian and Canadian Senates. The German Bundesrat has only slight powers over general legislation and its special powers are restricted to the precise federal purpose of restraining the Federal Government from undue interference with the Lands. In India, whatever one may think about the usefulness or strength of the Council of States, it can safely be said that as a federal instrument, its contribution has so far been almost nil. Its constitutional position, in this capacity is only negative. Its spirit will be invoked only when the Centre decides or when the question arises about the Central intervention in the legislative field reserved for the States. Witness, the import of Art. 249 which provides for the power of Parliament to legislate with respect to matter in the State list if the Council of States has declared by resolution supported by not less than ⅔rds of the members present and voting that it is necessary or expedient in the national interest to do so. Similar function is assigned to it with regard to the creation by Parliament of one or more all India Services Common to the Union and the States (Art. 312). The only real power which the Council of States can claim to possess is the Constituent power under Art. 368, but its value would largely be determined by the relative party position in the two houses. The Council of States has thus far followed the lead of the House of People. The Council's power of electing the Union President and the Vice-President, removal of the latter and the impeachment of the former is only of an academic interest. The functions of the Council regarding Emergencies are also of a negative character in the federal context.

In fact, the question of functions, role and influence of the Second Chamber in federal states is closely related to the mode of their composition. The quantum of their powers would be conditioned by the pattern on which they are constituted. The Canadian Senate is wholly nominated by the Governor-General and for life. While everal federations prescribe a higher age-qualification for membership of their second chamber, Canada has the distinction of prescribing a property qualification by law (ownership of property of $4,000). The upshot is that Senatorships in Canada has been invariably regarded as the choicest plums in the patronage basket. "The genial old gentlemen who populate the snug red-velvet chamber, live on undisturbed, meeting for a few weeks in the year, bumbling and grumbling at the Govern-

ment, making a few good speeches, and drawing an annual indemnity for less work than any other citizens of Canada."[1] Nevertheless, the Senate has done something to the delicate task of reconciliation among the divergent groups and interests throughout Canada. In the U. S. A. and Australia the Senate is entirely elected and directly. But in order that the Second Chamber may not be a duplication of the First, bigger Constituencies and a different system of voting have been prescribed in both the countries. In most of the constitutions of the federal type, however, indirect election has been favoured, and the electoral body is generally the assemblies of the federating units, the members of which have been elected directly. But in the Union of South Africa where this method is used the electoral body also includes the representatives of the Provinces in the House of Assembly of the Union. In India, the Council of States is partly nominated (only 12), partly elected, the elected members to be elected by the elected members of the Legislative Assemblies of the respective States and the members of the electoral colleges formed for the purpose in the respective Union territories, in accordance with the system of proportional representation by means of the single transferable vote. In the U. S. S. R. the Soviet of Nationalities is elected by direct popular vote. In Switzerland the procedure for election to the Council of States as well as the term is determined in each canton by its own law. Thus seventeen Cantons elect their Senators directly, four by their Landsgemeinden, and the remaining four by their Cantonal legislature.

Finally, the problem of bicameralism is related to the party system which in all democratic states is an extra-Constitutional question. Parties have been a great uniting bond in federal states, despite the fact that sometimes members of different parties from the same unit have more in common with each other than members of the same party from different units. If the party system has any value in strengthening the federal idea, it must be a two-party system. The reason is not far to seek. If parties are organized on a regional basis, they would only accentuate the centrifugal forces and may not lead to a strong federal government. The federal idea is double-edged and to be a success must cater to the need of unity as well as diversities. In Switzerland seats in the legislature are not arranged according to parties or according to government and opposition, but according to the districts and Cantons. But the government is a sort of national commission in which several parties join. In India, the federal system is, in fact, yet to be tested, for hitherto the unquestioned dominance of the Congress as well as the acknowledged leadership of Jawahar Lal Nehru within the ruling party and in the country at large has acted as an aid to unity. Federalism represents equilibrium or balance between the Centre and the Units. If the former is tilted, the state becomes rather unitarian, if the latter, it may even disintegrate or at least be subjected to grave strains.

1 Hutchinson, *The Unknown Country*, p. 82.

SECESSION AND THE FEDERAL PROCESS

These strains may lead to a demand for secession. One view is that in a federation a constituent state, in theory has no right to secede and the federal government, conversely, has no right to expel a state. If the general government is subordinated to the regional governments or vice versa, "that is an end of federalism." It is argued that the people of the country as a whole are the real parties to the Union, and not the states. This was the view held by Marshall J. in McCulloch vs. Maryland. "Whenever one State Government, or more than one, who form the minority party find that their interests are seriously suffering under any of the laws of the Central Government, that minority party should wait, argue, and try to get the law so changed as to make it amenable to its wishes." In the U. S. A., the issue precipitated by the Southern states insistence on the continuance of slavery was settled by the civil war. In Switzerland the Catholic Cantons attempted to secede and the question was decided by the Sonderbund War.

In 1934, Western Australia unsuccessfully petitioned the U. K. Parliament for secession from the Commonwealth of Australia and "a select Committee of Lords and Commons decided that Parliament was, by Constitutional Convention, not competent to deal with such a matter merely upon the petition of a single state of Australia." Their decision emphasised the fact that in practice as well as in law "no right of secession rested with any state acting alone." In India, the right to secession is not conceded. In modern states, the U. S. S. R. is the only federation where the right to secede is granted to the Union Republics. Theoretically, according to Stalin, the republics in joining the Union in 1923 did not surrender their sovereignty irrevocably, but voluntarily entrusted certain powers of statehood to the Central government, which they were free to recover by virtue of their right to secede from the Union. In practice, however, this has not happened and despite the amendment of 1944, in the Soviet Union, the Central control over the Union Republics is absolute. In the growth of federal theory, "the doctrine of nullification", in fact, has little importance. J. C. Calhoun, the most prominent of this doctrine argued that the states being parties as distinct and integral units, to the federal covenant, were free to come out of it if they discovered that the covenant was not to their advantage. He contended that the federal government "was the agent of the states and that the states were, therefore, entitled to nullify any act of their agent of which they disapproved. "Now this view is not only contrary to the whole federal concept which represents an equilibrium between the centre and the units, but also against the federal practice and process in modern states.[1]

1 For an interesting discussion of this subject refer to K. C. Wheare, *op. cit.*,pp. 91-92.

What is the federal process? How does it work? The federal process works from the smaller to the larger—a process of Centralization. The object here is stability and efficiency in government. Even where a large state subdivides itself on federal principles, it does so in order to secure more efficient government. In both cases distinct federating groups are permitted a degree of autonomy. Sometimes there is also the process of devolution or decentralization in government as in Mexico, Brazil and in India. In any case, the theory of secession is hardly compatible with the federal process.

FEDERALISM : CASE FOR AND AGAINST

Montesquieu said that federation has all the internal advantages of a republican together with the external force of a monarchical government. It can withstand an external force and can support itself against corruption. It has made possible the union of many small states into a larger whole for possibly without a Federal Union many of them might have been conquered by a stronger neighbour or they might have individually fought among themselves.[1] Thus the rise of Federalism has eliminated war as a process of absorption or expansion and has offered an excellent means of extending the area covered by a single political unit or state by the method of peace.[2] Not only local autonomy and pride has been preserved, but a[illegible] national pride and national autonomy. [illegible] ent communities to escape the [illegible] attaching to them. The demar[illegible] Federal and State Governments keeps the States satisfied with their autonomy and leads to efficiency. It has proved to be a mode of political organization by which a nation may realize the maximum of liberty compatible with order. It diminishes the practical difficulties which extent of territory tends to throw in the way of good government, especially the difficulty of enforcing obedience of the inhabitants of distant districts who may be recalcitrant, and the difficulty of securing that the Central Government is sufficiently informed as to the needs of such districts. Thus it prevents the rise of a despotic Central government. By creating many local legislatures with wide powers, it relieves the national legislature of a part of that large mass of functions which might otherwise prove too heavy for it. Problems of local interest are assigned to the local authorities and they are handled with greater sensitivity toward local considerations especially since the legislative and administrative officials are locally elected or nominated. The federating units may try experiments which at a later stage may be adopted by the whole country. In the U. S. A., for instance, national woman suffrage and alcoholic prohibition originated in

1 Sidgwick, *The Elements of Politics*, p. 516.

2 *Ibid.*, p. 517.

the states and were later accepted by the nation. In India, the panchayat experiment which was made in Rajasthan is ,being extended to other states, while prohibition tried in some states, has been rejected in many others. Thus seen, the component Units may experiment with new legislative and administrative approaches to the constantly changing problems presented by a technological age, and often such laboratory experiments by a single Unit serve as a guide for later federal legislation.

But there is the other side of the picture. The distribution of powers in a Federal Government between the Centre and Units and between the organs of Government may lead to paralysis. Federalism means generally the predominance of legalism —a general willingness to yield to the authority of the law courts. It creates divided allegiance and means duplication in all spheres. It tends to produce conservatism for it must have a rigid Constitution which may not be changed or amended easily. It may also mean weakness in the conduct of foreign affairs; it implies weakness in home government, that is, deficient authority over the component states and the individual citizens, involves trouble, expense and delay due to the complexity of a double system of legislation and administration, means liability to division into groups and factions by the formation of separate combinations of the component States; and implies want of uniformity among the States in legislation and administration.[1] In war time, it was once supposed, the federal state might be at a disadvantage because of the multiplicity of powers. But experience has disproved this. In actual practice all federal states acquitted remarkably well in the two World Wars. In most federal states, the enforcement of criminal laws is the duty of the federating units so that any suspected criminal may make apprehension and trial difficult by crossing a state line. The federating units may have different criminal statutes and different attitudes toward certain offences. Distribution of powers and jurisdictions may lead to disputes causing strain on the judiciary, while plurality of administation may prove to be rather expensive. As Dicey put it : "The distribution of all the powers of the State among Coordinate authorities necessarily leads to the result that no one authority can wield the same amount of power as under a unitarian constitution is possessed by the sovereign. A scheme again of checks and balances in which the strength of the common government is, so to speak, pitted against that of the state government leads on the face of it, to a certain waste of energy. A federation, therefore will always be at a disadvantage in a contest with Unitarian States of equal resources."[2] While the divided allegiance of the citizens may lead to rebellion or secessionist movements and sepa-

[1] Bryce *American Commonwealth*, Vol. I, pp. 334 and 341. Also refer to Sidgwick *op. cit*, p. 519 and J. Elliot's (Editor) *Debates on the adoption of the Federal Constitution* Vol. V. pp. 207-210

[2] Dicey *op. cit.*, pp. 171-72 and p. 605.

rated groups and factions, a double system of government may encourage recalcitrance.

But on the whole federations have shown a remarkable capacity to surmount these difficulties and people in federal States have invented effective devices for promoting greater unity required by modern life without outraging feelings, and traditions. Witness, for example, the exceptional uses of Presidential power and enlargement of the Central Governmental machine; or in Switzerland "quiet evasions of the Constitution"; or the various opportunities in the Indian Constitution for progressive increase of federal power; or the Australian addition of an Inter-State Financial Agreement to the Constitution. It is true that these and similar devices are helpful if there is the undercurrent of unity. But it is suggested that federalism in itself does not seek to sap the source of this current. Ultimately it is the human material which counts. Every Constitution has to be a product of history and history, as we know, scarcely gives an opportunity for exercising a choice between a Unitary government and Federal government. Much depends on the manner in which a country achieved independence, on the conflicts preceding it and on the forces that played upon it. That reminds us of the saying that a Constitution is made to measure, not one bought off the rack. "When the U. S. A., Australia, Switzerland and the rest were created, the facts and the feelings of the people concerned, were such that they could come together either as federations or not at all. The alternative to a federal U. S. was not a Unitary U. S. but no U. S."[1]

CURRENT TRENDS AND FUTURE PROSPECTS

The federal idea has not only been a tremendous cementing force in the past, but it holds out promise of humanity's survival in the days to come. It seeks to emphasise inter-dependence and interrelationships. It lays stress on the right ordering of our loyalties. It streamlines the true nature of political power and is a reminder that the nation-state is not the final stage in the evolution of social organization. Federalism is essentially a link or bridge which helps in bringing together nations for the purpose of cooperation and consolidation. It proved to be valuable for the League and is of immense value for the proper direction of the U. N. and the regional organizations in operation today. K. C. Wheare has written : "One of the most urgent problems of the world today is to preserve the diversities either where they are worth preserving for themselves or where they cannot be eradicated, even if they are not desirable and at the same time to introduce such a measure of unity as will prevent clashes and facilitate cooperation. Federalism is one way of reconciling these two ends."[2]

Within the federal states, the definite trend today is the

1 Michael Stewart, *op. cit.*, pp. 149-150.

strengthening of the Central government at the expense of the component parts. And this is done mainly by taking recourse to the theory of concurrent jurisdiction and the Doctrine of Implied Powers. As we suggested earlier, the fact that present technology has rendered more and more issues nation-wide implies that in one area after another the local governments will be supplemented by the national authorities. Another national tendency is the emergence of great regions (within a federation), each homogeneous, replacing the present boundaries of the federating states but having approximately the same relationship as they do to the national government. This tends to modify somewhat the rigidity of the federal system. Similarly its legalism is also under revision. In most of the federal states, for example, the tendency is in favour of extra judicial authorities for adjudication of federal disputes. In the economic sphere adaptability in the federal states has not been in doubt in recent years, and the Central Government has been allowed considerable latitude in finance. Now all this does not mean that federalism is moving toward unitarism. It is true that wars and the emerging concepts of national security, economic depression, the growth of welfarism, and the technological revolution of our time in respect of communication, transport and industry have led to a strong centre. But along with these forces, there is plenty of localism. In a country like India, if the pressures of planning tend to strengthen the Central Government, the need of generating enthusiasm among the people has obliged the government to launch the scheme of decentalization based on Gram Panchayats, Panchayat Samities, Samiti Panchayats and Zila Parishads. This would mean handing over all development activities to those Panchayats with advice naturally, but leaving the responsibility to them. Thus federalism faces two dangers—(1) it may merge into unitarism, (2) it may be disrupted by separatism. The second possibility is overruled by the forces at work we have examined above. The first may be averted by man's desire for diversity and variety, and man's attachment to local environment and traditions. The prospects of federalism, on the whole, are bright.

4

POLITICAL PARTIES[1]

Political party, said Burke, is a body of men united for promoting the national interest on some particular principles in which they are all agreed.[1] It is a more or less organised group of citizens who act together as a political unit. It is an association organized in support of some principle or policy which by constitutional means it endeavours to make the determinant of government. It is, therefore, a group or body of people who, holding the same general views on some, if not all, public questions seek by concentrated action to gain control of the government as a means of ensuring that the policies in which they are interested will be carried into effect. Political parties, therefore, are like a joint-stock company, to which each member contributes his share of political power. They are thus collectively able to acquire the strength which it would have been impossible for them, acting singly, to obtain. A political party is, in short, a group of human beings stably organized with the objective of securing or maintaining for its leaders the control of a government, and with the further objective of giving to members of the party through such control, ideal and material benefits and advantages.

NECESSITY OF PARTIES

Political parties are not particular in any age or country, because we have some sort of parties at all times and in all climes. Human nature has a characteristic tendency toward combativeness. But in more evolved societies men gang up or choose sides, thus creating parties in an attempt to give organized expression to this competitive instinct. Patricians and Plebians in ancient Rome, Guelfs and Ghibellines in medieval Italian towns, Roundheads and Cavaliers in the 17th century England—

1 Burke, *Thoughts on the causes of the Present discontents* (1770), p. 16. MacIver *The Web of Government*, p. 122. Ogg, *English Government and Politics*. p. 478. Also Leacock, *Elements of Politics*, p. 311. Compare Gilchrist, *Principles of Politics*, pp. 327-28. "A political party may thus be defined as an organized group of citizens who profess to share the same political views and who by acting as a political unit try to control the government."

these and many other fiercely contending groups display undeniable characteristics of parties. Historically, therefore, political parties are an old affair. They are inevitable psychologically. This approach ascribes the motives for forming parties to man's temperament. Some men are said to cling to the past and resist innovation, while others boldly assume risks as an inevitable consequence of meeting the challenge of a changing social order. Those who have common attitudes join together in a programme for political action. Granting the natural differences in the capacity and the mental qualities of men, how can we assume that all men should have the same opinion on all questions and that they should not differ? This means that those whose opinions are common range themselves on one side, and those who differ, on the other. There are four kinds of men : some who wish to return to the methods and institutions of the past (reactionaries), some who wish to retain those of the present (conservatives), some who wish to reform present institutions (liberals), and some who desire to abolish them (radicals). On the basis of these essential temperamental differences, people make groups on the basis of various issues—religious, social, political or economic.[1] A refinement of this theory suggests that man changes his attitude toward government as he progresses through life. In boyhood he may be radical, in youth a liberal, in middle age a conservative, and in old age a reactionary. Each stage of development forms the basis for a party programme. Another view is that the personality of a dynamic political leader is the nucleus of a party, for, he may inspire unthinking obedience in his followers who in their adulation

1 Sait : *American Parties and Elections* pp. 145-153 He indicates four basis of parties : (1) religion (2) nationality (3) temperament (4) economic interest. Also refer to Aspects of American Government (The Hansard Society). T. A. Smith's contribution entitled "Politicians Parties and Pressure Groups." It is only in Utopias that there are no political parties. Indeed to the simplest soul the cessation of politics would spell Utopia. The moral is that since partisan purposes are inevitable it is better to be conscious of them, to admit them and strategically to contain them. If all this be possible it constitutes good news. It is indeed the gospel of democracy. Political parties are great achievements, for they are the—instrumentalities of this good news." Rohmer a 19th century writer traced parties to natural diversities of temperament in the various stages of a man's growth, boyhood, manhood and old age. "Youths", he said, "by nature are radical, youngmen liberal, middle aged men conservatives and old men absolutist and reactionary." Tarde traced their origin in the imitative tendency in man, some imitating old customs others new. Refer to Lowell's *Public Opinion and Popular Government* pp. 64-65. Sir Henry Maine in his *Popular Government*, p. 101 traced the origin of parties to the combative instincts in men. "Party" he says "is probably nothing more than a survival and a consignment of the primitive combativeness of mankind. It is war without the city transmuted into war within the city, but mutilated in the process. The best historical justification which can be offered for it is that it has often enabled portions of the nations who would otherwise be armed enemies, to be only factious."

form a group to support his struggle for power. In all these views there is some truth although they do not adequately explain the beginning and the continued life of parties. "Rivalry is only one of the many motivations of behaviour, age is an uncertain index to political attitudes, and the characteristic traits of a political leader are mortal." If some people join a party because of its principles or what they deem its principles, others affiliate with parties in order to acquire political power. Many persons especially in the U. S. A., join a party because of their place of birth or residence so that an American southerner is likely to be a democrat; a resident of Vermont a Republican. Sometimes a man is "born" into a party. This again is very true in the U.S.A. where changes in economic interest are often disregarded in favour of the father's attachments. On the basis of religion we are familiar in our country with such political parties as the Muslim League, the Jan Sangh and Hindu Mahasabha. In many parts of Europe, a person's religion motivates him to join a political party. Sometimes the party label announces its affiliation with a church body, as the Catholic Centre Party of Pro-Nazi Germany. In some cases, parties are reported to have certain religious ideals. In France parties of the Right are generally Catholic; those of the Left anti-clerical. In the U. S. A. while religious bonds may not cause a man to join a specific party, they may as in the case of Al Smith in 1928, hamper his political career. On the basis of political issues there have been the royalists and the republicans. On the basis of social issues like slavery, there came about party split in America.

But predominantly, parties are organizations which seek to determine the economic constitution of the State. The important question is what keeps the party together ? In part, no doubt, the momentum of organization itself, in part the power of leadership to attract followers, in part, perhaps, the temperamental bent. But above all, the cohesiveness of a party, is the outcome of the decision of its members to promote, what Burke called, "the particular principles in which they are all agreed." In the ultimate analysis those principles will be found to be of economic character. Often enough, no doubt that character may be obscured by the complex crosscurrents of the intricate thing that society is. But the fact remains that all political parties which endeavour for any considerable space of time are founded in economic discontent. Thus according to James Madison the most common source of parties has been the "various unequal distributions of property." The "haves" and the "have-nots" tend to form distinct political groups. Even persons holding different kinds of property tend to form different groups. A landed interest, a manufacturing interest, a mercantile interest with many lesser interests tend to divide people into different classes actuated by their own special feelings and sentiments. Economic questions, therefore, play an extremely important role in sustaining parties. This is true of the Whigs and the Tory's in England, and of Re-

publicans and Democrats in the United States. Where third parties arise, like the Labour Party in England or the Agrarian Party in America, the same is true. Parties which have been built around religion have rarely been able to maintain themselves for long, or if they have done so, they have been compelled to adopt an economic programme only casually relevant to their religious origin in any direct way. And the same rule holds for nationalist parties. The claim for national autonomy is a protest, in the last resort, against economic opportunities withheld as the nationalist deemed, by superior power. Thus the party is a mechanism to control public opinion about property in the particular way its members deem desirable.

But this is not to argue that only economic interests determine the present and future of political parties. A political party is a conglomeration of diverse interests. "In reality" Merriam says, "the party is the focus for every type of social interest that is materially affected by governmental attitude of action. The party is the near government, or even the actual government itself. In the struggle for party declarations of principles and for the selection and election of candidates all the tendencies converge, and clash or collisions may be averted by constructive compromise or by dubious truce. Railroad and shipping trust and small dealer and consumer, farmer and union, organized and unorganized, North, South, East and West, social, religious, sectional, and class interests, racial and geographical groups, hereditary forces and new ideas, prejudice and logic, party managers, ambitious leaders are finally arranged into two great armies which battle and dissolve in part and then re-assemble for conflict once more. To understand the party at any given time it is important always to make the necessary analysis of it into its constituent elements and then observe how the synthesis is made.[1]

But whatever the basis of political parties, the fact of the inevitability of parties remains. In recent times no one has shown how representative government could be worked without them. Wherever political parties are non-existent either one finds a passive indifference to all public concerns, born of ignorance and incapacity, or else one finds the presence of a tyrannical and despotic form of government, suppressing the common manifestations

[1] Merriam. *The American Party System*, pp. 58-59. Compare Laski, *Parliamentary Government in England*, p. 81. According to Prof. Laski "Every party is to some degree a federation of interests to which as best as it can it will seek to accommodate its policy. But that granted the main base of its operations is the economic basis; the policy of each is unintelligible except in the light of that understanding." Also see Bryce, *Modern Democracies*, Vol. I, p. 126. He says: "Though the professed reason for the existence of party is the promotion of a particular set of doctrines and ideas it has a concrete side as well as a set of abstract doctrines. It is abstract in so far as it represents the adhesion of many minds to the same opinions. It is concrete as consisting of a number of men who act together in respect of their holding, or professing to hold, such opinions"

of opinion and aspiration on the part of the people. Organised, drilled and disciplined parties are the only means we have yet discovered by which to secure responsible government and thus to execute the will of the people.[1] Thus viewed, although political parties are extra-legal in character—extra legal in the sense that they have got no recognition in the eye of the law—they supply the motive power for governmental organisation in all democratic states. In real substance, as Laski puts it, the absence of legal recognition for the existence of parties does not mean that they are not effectively a part of the machinery of government itself. Officially, no doubt the Cabinet is merely a body of Her Majesty's Ministers charged, under parliamentary supervision, with carrying on the business of administration. But the point is that they are Her Majesty's ministers because their party supplies them with a majority in the House of Commons, and there is no way in which they can otherwise continue in their posts save through a constitutional revolution. This majority, we repeat, consists of those people who agree upon what Burke termed the 'fundamental principles'. Any analysis, therefore, of the motives behind party action in the ultimate analysis will have to be economic. This is, however, not to argue that principles like emotion and feeling which Lord Bryce so strongly emphasises do not find a place in the complex of the motives behind party action. This is, on the contrary, to argue, that the predominant motive behind party action is that driving force which goads a set of persons to the distribution of property in a certain fashion.

On this showing, the determinants of a political party are to be found in the socio-economic environment of a people. In western Europe, party system has largely been the result of restrictions that were gradually placed on the monarch, and of the extension of suffrage. "As long as the king enjoyed a monopoly of power and the mass of citizens could not vote, party activity was not only fruitless but treasonable. Thus it is not surprising to find the historic roots of the party both in the struggle of the legislature to limit the king's prerogative and in the development of groups within the expanded electorate taking sides in the battle or demanding recognition of their interests." With the triumph of parliament over the king in the U.K. by 1688, power shifted from the single hand of the Monarch and became the joint concern of both the king and the parliament. Factionalism grew within the parliament and the terms "Whig" and "Tory" were applied to those who condemned and supported royal policy respectively. All that was needed was to connect this factionalism within the Parliament with popular strength outside. This con-

1 P. O. Ray, *Introduction to Political Parties and Practical Politics* (New Edition) 1917 pp. 9-10. Also see Ogg, *English Government And Politics*, pp. 478-479. He quotes a cynic observation: "Parties exist not because there are two sides to every question but because there are two sides to every office—an outside and an inside."

necting link was supplied by the extension of suffrage. As one authority has put it : "The gradual demarcation of the basic civil rights of freedom of speech, religion, and assembly prepared the way for the extension of the suffrage and the expansion of the electorate. When the principle of legislative responsibility to the citizen voter was established, the electorate became the source of political power. The voter's interests clamoured for recognition, and the responsible delegate was glad to respond. The electoral reform of 1832 was followed by the substitution of the party names of "Liberal" and "Conservative" for the labels "Whig" and "Tory", and the contemporary British parties were born.[1] In the U. S. A. from the earliest year, the centralizing aristocratic approach of Alexander Hamilton and the decentralizing popular approach of Thomas Jefferson divided men between the Federalists and the anti-Federalists who later became the Democrats and the Republicans. In Switzerland, after the revolution of 1798, the country was divided into two parties—the party of Unity and the party of Federalism. Between 1815 and 1830 the liberal party grew and from 1832 on, its left wing became the Radical Party. Its moving principle was the sovereignty of the people and opposition to federalism. To the Right, the Catholics also organized themselves. Once stability was achieved and a federal constitution was adopted (1848 and 1874) political parties were formed throughout the country on solid foundations. They were first formed in the Cantons, then, bit by bit, the Cantonal organizations were grouped on a national scale, the Radicals in 1878, the Catholic—Conservatives in 1881, and the Liberal—Conservatives in 1893. France has been noted for the multiparty system which many acute observers have attributed to the French temperament. The most satisfactory explanation of this, however, would seem to lie in French constitutional history. This history presents a series of Constitutions, with each successive change of government depositing a residue, so to speak, of traditions and loyalties. Monarchists, Bonapartists, Republicans of various kinds, liberals and socialists—all look back on episodes in the development of political institutions and cling to the doctrines formulated by their fathers or grandfathers. There is also the persistence of attitudes of mind in various parts of the country—the traditional conservatism of the ancient provinces of Brittany and Normandy made up of the natural caution of a thrifty farming population combined with the restraining influences of devout Catholicism; the active republicanism and moderate socialism of the "Midi" south of the Loire river; the labour unionism and working class socialism in the industrial suburbs of Paris called the "red belt", and the moderate conservatism of the financial and business communities of the great industrial areas in the North East where much of French heavy industry is located.

1 Rodee, Anderson, and Christol, *Introduction to Political Science*, 1957, pp. 395-396.

[illegible] lections, [illegible] control [illegible] tinuing [illegible], develop and maintain a sense of national unity, co-ordinate the branches of government wherever there is a separation of powers, and permit the electorate to function. In the selection of official personnel a political party has to work as a huge sieve through which the competing types of personnel are sifted and choices are finally made In the formulation of public policies political parties select various issues and present their programmes and manifestoes to the voters so that they may know the principles on which every party is working. These principles and policies are then explained, expounded, discussed, urged and opposed from the point of view of party expediency and public advantage. For this purpose public meetings are held, pamphlets are distributed, posters are displayed, canvassing is resorted to and even the public press is called in aid of the contending parties and their candidates. In most of the cases it will be found that the public press is owned by the property holding class so that the newspapers become the spokesmen of the principles and policies of this class. Because of this incessant propaganda in various ways the electorate comes to know the ins and outs of various programmes and in the context of their social and economic stations they vote for this or that party. In countries where the western type of democracy prevails, political parties also serve as conductor or critic of the government. In this capacity it is known as the Opposition which contains what has been called the 'shadow cabinet'. It also serves as the intermediary between the individual and the government, as the buffer, the adjustor between society and individual. This, it does, because it makes democracy workable over large areas. No free country can function without them. They bring order out of the chaos of multitude of voters. Thus as Lord Bryce has happily put it "if parties cause some evils, they avert and mitigate others." They keep people together and prevent them from wasting their strength by discussions and schisms; They give the voters some knowledge of the political issues they have to decide.[1] They furnish certain social political cement by

1 Laski, *op. cit.*, p. 313. Compare Merriam *op. cit.*, pp. 378-79 and Lowell *op. cit.*, pp. 86-95. He says "parties cause a bias ..produce unnatural divisions and thus falsify public opinion. Men are not naturally separated by hard and fast lines into two or more compact groups but present every kind of combination of opinion. ....Two parties especially involve only 'Yes' or 'No' and many parties mean that a voter can say 'Yes' or 'No' to only one proposition. This means the differences are not integrated. Every vote is given not for the whole but for a partial cause. Public opinion thus remains distorted .....It is the extreme element that always leads the party, the moderate elements are mere hangers on......Some times the extreme element forces the hands of the leaders to do and to say things which the latter does not desire. In that case too the real opinion remains unrepresented. Also see Lord Bryce *op. cit.* Vol I. pp. 131-133. He calls the party system as "organized hypocracy". Refer to Lea-

which the more or less independent and scattered parts of the government are bound together in an effective working mechanism. They tend to ensure that the government at any time will be subject to steady organized criticism, ǝɥʇ effect of which will usually be wholesome. They make possible the art of representative Government which requires for its success a stable majority in the legislature. They provide a forum for discussion the only alternative to which is a bloody revolution and a concentration camp, because if a community has occasion to talk, it will have no occasion to revolt. Parties keep a nation's mind active as the rise and fall of the sweeping tide freshes the water of long ocean inlets. They impose a discipline and a nec
on the greater mischief of corrupti
opposition they effectively check
"They prevent popular vagaries from driving their way to the statute book. They are the most solid obstacle we have against the danger of caesarism. Above all they enable the electorate to choose between alternatives, which even though at best an artificial dichotomy, are the only satisfactory method of obtaining a government. For, on practically every issue in the modern State, the serried millions of voters cannot do more than accept or reject the solutions offered." The party system may be regarded as an institution supplementary to the government, aiding the electorate in the election of the official personnel and in the determination of public policy, and in the larger task of operating or criticizing the government.[1]

The need of political parties in a political democracy lies in the theory of Universal Adult Suffrage as the essence of a democractic State. If authority is to be derived from the consent of the governed and public opinion is consulted as to the policy to be followed, parties become inevitable. On the one hand, elec-

cock, *Elements of Politics*, p. 312 "......the individual judgment (remains) frozen tight in the shape of the party mould. This kind of unanimity seems to its critics false and injurious, it suppresses that very freedom of individual opinion and action which is meant to be the vital principle of democratic Government." That *party system renders the adherents partisan* is brought out in the lines of Goldsmith on Burke :

"Who born for the Universe narrowed his mind.
And to Party gave up what was meant for mankind."

Compare Marriot, *The Mechanism of the Modern State*, Vol. II, p. 431 Marriot says "Party allegiance if carried to excess may easily obscure the claims of patriotism." And Gilchrist *"Principles of Political Science"* p 331; he says that parties are guilty of *suppressio veri and suggestion falsi.* Steffens calls a party as "an organization of social treason." For interesting suggestions refer to Ostrogorski's *Democracy and the organization of Political Parties*, Vol. II, pp. 658-59: Chase, *Democratic Governments in Europe*, p. 95.

1 Refer to Lowell *op. cit.*. pp. 97-98 and Bryce *op. cit.* Vol. I, pp. 134-35 and compare Merriam *op. cit.*, p. 371 and Sait, *American Parties and Election*, pp 157-164.

torate left to itself is an incoherent mass; and parties enable them to sift the relevent from a confused heap of undigested material. On the other hand, organized cooperation among those who broadly think alike is the essential condition of achievement; and organized cooperation is party. Government requires leaders and they require an organized following able to canalize the issues for an electorate with a free choice. Government is not only a continuum of choices but of choices which have been authorized by the people after careful thought by themselves or by their leaders on their behalf—choices, that is, which are public replacements of otherwise private decisions. In a democratic set-up, to govern is to choose, to choose is to reason, to reason is to learn and know. And it is there that political parties come in. They present to the electorate alternatives between which a choice is to be made. They represent various economic interests and offer various programmes associated with various political leaders. "They cut roads, as it were through the jungle of conflicting individual opinions, each road offering either a separate destination, or separate ways of reaching an agreed goal. But without these roads the electorate would wander aimlessly and effectually."[1] If there would be no parties, the electorate would either be impotent or destructive by embarking on impossible politics and courses of action that would completely wreck the political machine. In short, political parties in the scheme of a political democracy has a vital role to play, each trying to bring the largest number of voters into its ranks, organize them locally, appeal to them by the spoken and printed word, and bring them up to the hall.[2]

THE POWER BEHIND THE THRONE.

Political parties not only organise the electorate, they also educate and sustain public opinion. They constitute a school of democracy and public life. They enable the average citizen to express his opinions freely and easily. They provide him with a mass of information and knowledge of public affairs. They make it possible for him to speak and debate and to influence the party decisions and through them, the decisions of the community. They take him out of a mood of helplessness, inject a spirit of dynamism, and serve as "a kind of open window on local public opinion." They insist on proving that there are several aspects of a question and that the one emphasised by the ruling party is not the only one which will be presented to the political sovereign. Even if they sometimes "falsify the perspective of the issues they create"[3], they are a sure guarantee that ultimately the correct

1 Soltau R. H., *An Introduction to Politics*, p. 200.

2 Bryce, *Modern Democracies*, Vol I. p. 125. Also Cf. Laski, *A Grammar of Politics* pp. 312-13. "...in the confused welter of the modern State there must be some selection of problems as more urgent and to present solutions of them which may be acceptable to the citizen body. It is that task of selection the party undertakes". It acts in Mr. Lowell's phrase as "the broker of ideas."

3 *Ibid*, p. 313.

perspective would emerge. They inculcate a team spirit, a feeling that the team counts far more than the individual champion whose victory is tied down with that of his team. They are, in the happy *phrase of Finer, "the power behind the throne, the centre of political gravity"*.[1] Even if they create the evils of group separatism, they have to agree on fundamentals, the rules of the game. If they produce what Laski has called "an incomplete and compromising loyalty", they constitute an insurance against bigotry and fanaticism. If they "force the judgment of men into the service of their prejudice", they also provide serious jolts and jerks to those prejudices and the result is only a mimic warfare. In short, they provide "the most wholesome way of conducting politics."

And this is possible because political parties provide alternative teams to run the government. A political party is "an army that prevents Civil War". Competition and pugnacity are among the tendencies and forces by which every party lives and thrives. "Men enjoy combat for its own sake" and they love to outstrip others.[2] Political parties tame the tiger in men. They provide the outlet for the steam and replace the battle of bullets by one of ballot. Their warfare is a warfare which "maintains the peace and does not lead to its infraction." They enable people to "afford to bicker safely". They make possible, that is, the peaceful [illegible] They [illegible] st solid [illegible] mmunity where no polilical parties are permitted, the alternative government is one to be composed of coteries, policemen, soldiers and gangsters, and it is only by Putsch or a Coup that they shall seize the power to oust a government. They render a government a going concern and they prevent formation of monopolies in politics which are worse than economic monopolies. They knock out the ground of the irresponsible revolutionary by insisting on a re-examination of the accepted principles and formulae. They stand against "doctrinal commitment" which makes traitors of adversaries and which tends to change the rule of the game in order to exclude the other side.[3] On the one hand, they militate against the tyranny of the majorities and persuade them to see that they hold their job on good behaviour; on the other they enable the minority to submit to the majority gracefully and ungrudgingly for they know that political opinions do change and in the near

1 Finer, *op. cit.*, p. 212.

2 Bryce, *op. cit.*, p.127. "The same sort of passion as moves the crowd watching a boat race between Oxford and Cambridge or a football match between Yale and Harvard, as the steam which works the great English and American parties

3 *The Western Pol. Quarterly* Vol. VIII No 3 September 1953, pp. 401-402 : "The capacity to govern depends on the law of the situation. It depends on what should be platitudinous by now : an analysis of facts, a receptivity to debate a willingness to concede, an examination of the alternatives, a making of choice and as the Foderalist said 'the tendency to produce a good administration.'

future the shadow cabinet would cast off the shadow and take the office.[1]

Political opinions change because in a political democracy there is an intense discussion at every stage—discussion in the party, in the electorate, in the cabinet and in the parliament. A political party, as Barker has put it, is a kind of bridge which rests at one hand on society and at the other on the State. "It is.... a conduit or sluice, by which the waters of social thought and discussion are brought to the wheels of political machinery and set to turn these wheels.[2] But a single party can hardly provide the basis of discussion. In a state where only one party is permitted, where that is, the State becomes partisan, party ceases to be an organ of discussion in itself. It equally ceases to be a stage in a movement of discussion which goes progressivley through other stages. Changed in itself, it changes the whole process. Ceasing to be a part, it becomes the whole. Ceasing to be a means, it becomes the end." Indeed the factor of discussion underlines the agreement on fundamentals of which we spoke earlier. The discussion proceeds within these fundamentals. Not tha' fundamentals are static. They may keep on changing and the, must, or else dogmatism will be the result. The party conflict gives expression to what is called "a primordial instinct" and provides "a form of orgy and a way of escape from tedious routine". Where one party absorbs the state, discussion becomes meaningless for the ruling clique would entrench itself and the opposition would be treated as treason.[3]

It is sometimes argued that parties produce divisions in the electorate. But this division is not a schism or a chasm. They only lead and organize the various shades of public opinion. They are not and should not be organized on the basis of the unchangeables—ancestry, language, caste, religion or even economic status for party system will break down if it is not based on opinions which can easily change. If a party closes its door to any person on grounds of ancestry or language or religion or any such factor,

1 Jennings, *The British Constitution*, pp. 32-33. Political parties enable "the minority to submit peacefully and even cheerfully to the fulfilment of the policy of the majority. It would be quite different if the minority were always a minority, if it were liable to oppression by the major and if in no circumstances could its views prevail."

2 Barker, *Reflections on Government*, p. 39. Cf. Jennings, *op. cit.*, p. 36. "A party does not consist of members and programme but a whole complex of traditions, loyalties and ideas. Government cannot be studied as an anatomy but as biology."

3 Field, *Government in Modern Society*, p. 291. "The alternative to party government is some form of dictatorship if only in the limited sense of "Bossism" or the self-perpetuation of a group of office holders, often found entrenched in local communities....Dictatorship singles out certain groups for some degree of self expression and attempts to require the forced performance of necessary tasks by others .... Party Government is the best insurance against such exaggerated assertions of the self-assertion of certain group."

it will not only suffocate itself by a rigid exclusiveness, but it will tend to be totalitarian in tone and temper. Political parties, therefore, do not create unbridgable gulfs. "They gather up the whole nation into fellowships, and they lead, in the sense of bringing to the individual citizen a vision of the whole nation, otherwise distant in history, territory and futurity"[1] Moreover by injecting a dynamic spirit in a democratic machinery, political parties render the administration flexible. They enable the armed forces to keep out of politics and work at the bidding of whomsoever forms the government. They ensure a neutral and non-political civil service. In a country where there is no united opposition and therefore, no chance of an alternative government the civil service tends to identify itself with the ruling party. Where, therefoıe, there is a Government of one party today and another party tomorrow, the srvices in their own interest cannot afford to ally themselves with the fortunes of any one party. In short, political parties are the greatest insurance against abuse of power and the tyranny of the Legislature.

But if, on the one hand, political parties create a system of representative government, on the other they also ensure responsibility. They provide a government which in the nature of things has to be responsible to the people's representatives. The opposition can make an appeal from the Government to the Parliament and if they are not satisfied, an appeal to the masters of Parliament is always possible, for elections are held at regular intervals. But not only the government is made responsible, what is more, the opposition also tends to be responsible, for the opposition party or parties, thinking of themselves as the next government always tend to advocate those policies which can be worked out and implemented.[2]

PARTIES, THE LEGISLATURE, AND THE ELECTORATE

The problem of the role of the parties in the Legislatures raises important issues. A question which has arisen in most of the democratic countries is that of relationship between *the* parliamentary party and the party organisation outside the parliament. As long as [illegible] is not likely to assume much [illegible] it issue when a party cor[illegible] bers of a party are free to express their opinions and not much difficulty would arise. Making his statement in December, 1937, Mr.

1 Finer *Op., cit.*, p. 276. Cf. Mackenzie, *British Political Parties* pp. 599-600. Political parties also fulfil an important integrating function. They are one of the main channels through which interest groups and both organized and unorganizd bodies of opinion can bring their views to the attention of the parliamentarians. The parliamentary leaders in turn must sift, weigh, analyse and evaluate the views that are conceived through the party organization."

2 Sydney D. Bailey, *Parliamentary Government in Southern Asia*, p.50 "A party which is in the wilderness too long tends to become increasingly unrealistic."

Attlee, who was then the leader of "His Majesty's Official Opposition", stated the position of the opposition leader thus :

"The Leader of the opposition is a private Member, he owes no allegiance to the Government. No action of his can in any way implicate the Government. He is responsible only to his constituents and to the Members from whom he derives his position."

But when a party comes to power, the Leader of the Party, in his capacity as the Prime Minister is responsible not "only to his constituents and to the Members from whom he derives his position", but also to the national legislature and, therefore, must be prepared at times to subordinate the interests of his party to the interests of the nation. To do this it is essential that the parliamentary party holds itself responsible to the electorate and not to the party organization in the country. If the party organization net-work were to have an upper hand in the formulation of government policies, the result would be what Ostrogorski called : "Caucus Control". The true role of extra parliamentary organisation of the party is to serve and support the party in Parliament. Any other relationship might well damage the ends of a democratic state because in that case parliament would be supplanted by the party caucus and a great confusion of functions would follow. After all, the function of a political party is to help its leaders and representatives get elected. Those who have to elect are the political sovereign. If the parliamentary party were to hold themselves responsible to the mass organisation in the country, policies would not be national, they would be partisan. As Mackenzie has put it :

"The primary function of the mass organisation is to sustain competing teams of potential leaders (in the Legislature) in order that the electorate as a whole may choose between them. All other functions (involving attempts by [illegible] ence the formulation of policy and [illegible] the parliamentary parties) are [illegible] The mass organisations may be permitted to play a small part in these respects, but if they attempted to arrogate to themselves a determining influence with respect to policy or leadership they would be cutting across the chain of responsibility from cabinet to parliament and to electorate."

Thus the function of the electorate is not to formulate policies or reach the decisions but "to decide which of two or more competing teams of potential leaders shall make the decisions." There is nothing undemocratic about it. There is hardly the "iron law of oligarchy" at work. Just as the electorate is led by parties in the interest of democracy, so the parties are led by leaders. In fact, there is no alternative to this process. But this does not mean that the leaders can afford to ignore their followers, even as the parties have to study the moods and aspirations of the people and give a drive and a direction to their moods and aspirations. Thus

if the electorate has no hand in reaching policy decisions, there is nothing undemocratic about it. The democratic process ensures that priodically there would be elections and the electorate would get the chance to review and to judge the record of the policy-makers, and if it so desires, it has the option to replace them by electing the other team. All the parties bring forth their policies in the formulation of which the average party may or may not have had a hand. But once a party comes to power, it runs the government as a matter of trust on behalf not of its mass organisation but on behalf of the electorate. Its leaders have their own concepts of the national interests and they cannot and should not be dictated either by the mass organization or by the electorate. The important function of mass organization is "to sustain the candidates for leadership" and that of the electorate is "to choose between the competing teams." We in India will do well to bear these factors in mind. To this we will revert later in this chapter.

It follows, then, that the important function of a political party in a Democracy is to activise the individual to provide the means through which he can play some part in reaching the decision of the party and in electing the leaders of the party, thus providing an excellent preliminary training for his "parliamentary candidature and eventual entry into parliament." But they not only activate some voters, they also reinforce others in their original opinion and in some cases they also convert. By exposing the electorate into a cross fire of political argument and debate they stimulate public interest in the essential business of attending to the arrangements of society. They confer an organic character on the legislation and as we stated earlier prevent, "popular vagaries from driving their way to the statute book."

In federal states they help in unifying the government. In the U. S. A., for instance, there is no guarantee that a democratic governor will abide by the policies of a Democratic President, save through party activity and control. In a Unitary State such as France parties intervene to keep the prefects subservient to the Minister of the Interior who is their superior and who appoints them. Finally, on the one hand, a party can far better acquaint the voter with the candidate, even though in a biased fashion than he could acquaint himself, and on the other, it gets people, to vote. The discriminating person need merely consult the utterances of the major parties and draw a balance to understand most of the issues at stake. By contributing to the formation of public political opinion parties supply impetus to the voter. They even assist in actually transporting to polling booth voters who are sick, lame, aged or too remote. In short, political parties work as lubricating oil for the machinery of Government.

THE DARK SIDE OF THE MOON

But in doing so they sometimes push themselves on a perilous brink. The members of the parliamentary party are bound

about persons allegiance which ought to belong to ideas, and by building upon the unconscious and pressing the judgment of men into the service of their prejudices. They include eminent persons from the service of the entire community and breed opposition for the sake of it. They substitute passion for patriotism, suspicion for mutual trust, doctrinal commitment for free and independent thinking. They tend to divide not only the legislature but also the nation and these divisions may even be exploited by foreign states. They render the legislature atomistic and the executive, jerkey and halting and weak. Members are enrolled for number rather than for quality. They encourage and organize hypocrisy, for, they make promises which they know they cannot and perhaps will not fulfil. They narrow down the vision of their adherents within the narrowness of their respective organizations by distributing loaves and fishes on which cliques thrive. They develop and promote what has been called the "invisible government of the wirepullers" which is responsible to none and which is beyond any legal or statutory restriction.

CORNERSTONE OF DEMOCRACY

Nevertheless, parties constitute the corner stone of democracy and the services they render are, as we stated earlier, inestimable at least in countries like the U. K., U. S. A., Australia and Canada. In the U. K. they are the outcome of local environment. Originating in the Civil War their evolution has been affected by conflicts of religion, economic interest, race and even personality. "This history," as Sir Ivor Jennings has written, "has created a complex of emotions helping towards the conflict of parties by which the complexion of Parliament and the Government, their relations with each other and the electorate, are determined."[1] Now this system cannot be reproduced in a different environment and among a different people and, therefore, one must be very cautious in adapting the British constitution in other countries. The British society is homogeneous and people, on the whole, agree on fundamentals. This circumstance "enables a party, system to be developed on national lines, cutting through all differences of race, religion, and locality." Similarly in the U. S. A. and in other politically advanced states, party system has been affected by local factors. In short, we may conclude that the role of parties is vital in modern democratic states and that their functions include (a) proposing candidates (b) stimulating and educating public opinion, (c) getting people to vote in elections and organizing the electorate, (d) assuming responsibility for government, (e) supplying criticism and an alternative government, (f) choosing appointee officers, (g) in federal states, unifying the government, and (h) in general bridging the economic and geographic gaps of sectionalism, nationalizing the interests of the electorate and providing a channel for the effective expression of public opinion.

1 *The Approach to Self-Government*, p. 9.

class, it holds complete tutelage and is the vanguard of the proletariat. *Vis-a-vis* the government, it is the nucleus of all authority. In relation to its own ranks, it embodies maximised unity by keeping its size within limits, maintaining its ideological purity and vigorously controlling all forms of deviation "inner party struggle" generated by "democratic centralism.

Now, Democratic centralism, as Vyshinsky has written, is sharply opposed to the bureaucratic centralism of the Capitalist States.[1] It combines uniformity and centralism with variety and local self-government in details. The essence of power rests within the Party, but considerable initiative is left with local units and at all levels of government, all power is encircled by elected representatives who are at all times accountable to their electors. "Each organ of authority being formed by a procedure at once democratic and logical, is responsible to its electors and is bound to execute their will while at the same time it is also responsible to superior organs of authority and bound to fulfil all their orders provided they are given within the limits of their respective jurisdiction."[2] The principle of democratic centralism is thus applicable to the Soviet Federal system, to the hierarchy of Soviets and to the Communist Party. It underlies the relations between the different tiers of the Party pyramid, from the primary party organs and rising through party organizations in the rural and urban districts, areas, regions, territories and the Union Republics, to the Central All-Union-Party organs at the top. It means that (a) all directing bodies of the party from top to the bottom are elected; (b) that party bodies give periodical accounts of their activities to respective party organization; (c) that there is a strict party discipline and subordination of the minority to the majority; and (d) that all the decisions of higher bodies are binding on lower bodies and on all party members. Thus democratic centralism enables members to have full discussion of policies but once decisions are taken they have to be observed faithfully and no default or deviation is then permitted. The devices of criticism and self-criticism are useful in keeping the party cadres in the highest state of devotion and efficiency and serve as a prod to the inefficient, venal or irresponsible party or governmental administrators. Criticism, of course, has to be constructive and within the frame work of the fundamentals of the Soviet society. Thus seen, there is hardly any need of any opposition party in the Soviet system. Either opposition is constructive or destructive. The former is desirable and is allowed within one party, the latter is undesirable and is inimical and is banned. The post-Stalin developments have resulted in greater flexibility and resistance, without any loosening of discipline. The organizational pattern of the Party ensures a kind of strict military discipline in the party ranks.

1 Vyshinsky, *The Law of the Soviet State*, p 230.

2 *Ibid*. p. 424.

With regard to its leadership, the party maintains strict discipline which after Stalin is canalised through collective leadership and unity of will.[1] The C. P. S. U. maintains full-fledged departments dealing with agriculture, industry, finance, transpor tation, education *etc.* They formulate basic policies which are implemented by the Government. The party is organized territorially as well as functionally. The territorial sub-divisions range from the primary party organs (Cells) through regional and district organs to the Central Party Headquarters, the Party Presidium, the Central Committee and the All-Union Congress. Functionally, the party cells are formed for the youth, in the schools, the universities, police, army, press and radio, labour unions, and cultural professions. Children are gathered in the "Little Octobrists" and the "Pioneers" and young persons of both sexes are organized in "the Komeomol." There is a close integration between the family and the school while the entire educational system is in conformity with the ethos of the Communist Party. The Political police is on the whole an instrument of the Party, after the execution of Beria and since the advent to power of Khruschev, limitations have been placed on the operations of the political police. The Party control over the Red Army is complete and the removal of Marshal Zhukov from power reinforced this control. The Press and the radio are the mouth organs of the Party. Some 40 million industrial workers are organized into 200 unions and these are supervised by All-Union Central Council of Labour Unions which in turn is controlled by the Communist Party. Finally, the theatre, the music, the ballet, the opera, sculpture, painting, novel, poetry are all in the service of the Party.

THE COMMUNIST PARTY OF CHINA

Similarly, anyone who studies the Constitution of the People's Republic of China will not fail to see that behind the elaborate formal arrangement of government structure is always the controlling force known as the Communist Party of China. The People's Republic of China, under Articles 1-2 of the Constitution is a people's democratic state led by the working class where all power belongs to the people who encircle it through the National Peoples' Congress and the Local Peoples' Congresses which practise "democratic Centralism". The State "suppresses all kinds of treasonable and counter-revolutionary activities and punishes all traitors and counter-revolutionaries" (Act 19). Thus all opposition can be liquidated. Article 18 stipulates that all servants of the State must be loyal to the people's democratic system. Thus despite the freedom given to non-party organizations to set up candidates for election to the National Peoples' Congress one may be sure that candidates for election to either the National Peoples' Congress or Local Peoples' Congress will rarely get far unless approved by the Communist Party organization, that they will not be so approved by the Party unless they have affirmed

[1] Refer to Taylor Cole, Ed. *European Political System*, pp. 72-83.

their undeviating support to the regime; and that, even if elected they would not be tolerated if disloyal. The Party is thus the ultimate political authority and directs and controls the army, the government, and the mass political organizations. It is controlled by a new hierarchy which effectively wields authority from the top—from the 7 members of the Politiburo Standing Committee, the 20 members of the Politburo, and 193 regular and alternate members of the Central Committee—down to the tens of thousands of local party branches. By 1957, the Party contained 12.7 million members in addition to the 23 million members of the Young Communist League. The organization is based on careful selection, indoctrination, training, and protection, surveillance and checks on individual behaviour. The "Ips" (Inner Party Struggle) and the purges have been a regular feature and in November, 1957, Mao Tse-tung announced that "a Rectification Campaign" would be conducted every year. Following the May 1956 slogan "Let All Flowers Bloom Together, Let Diverse Schools of Thought Contend" a terrible rectification campaign followed which fully demonstrated the effectiveness of the totalitarian apparatus at the disposal of the Communist Party of China.

In all states having one-party system elections cannot be free in the sense in which free elections are understood according to the liberal theory of democracy. In fact elections are reduced (or raised) to the level of "dictated plebiscites". The voter is limited to names submitted to him by the party hierarchy and a negative vote is as futile as it is hazarduous. "As a monopolist rather than a competitor, the single party does not confront the necessity of maintaining its initial capture of power by renewed appeals to the electorate. Its leaders devote the muscles to gaining the ears of superiors in the party hierarchy rather than to worrying about the grass roots and touring the whistle stops. Quite naturally, the functions of the Party here have to be related to the needs of the monopolistic rather than those of the competitor. In such a scheme of things, therefore, party system cannot bring about any change in the complexion of government in an entirely peaceful manner. Succession becomes quite a problem.[1] There is, of course, a definite continuity of policy, a great deal of efficiency as well as speed. But there is, also, an atmosphere of suffocation, a sense of lurking fear, conflict of loyalties, disintegration in conscience, and the negation of the free human spirit. That such a system cannot survive indefinitely without changing both in political form and content is amply demonstrated by the changes taking place in the Soviet Society after the death of Stalin.[2]

THE TWO—PARTY SYSTEM : BRITAIN

The two-party system is characteristic of the Anglo-American

1 Refer to M. G. Gupta. *International Relations Since* 1919, Part II pp. 269-88.
2 For these changes see A. Denisove and M. Kirichenko, *Soviet State Law* (1960) and Y. Zaitsev and A. Poltorak, *The Soviet Bar* (1960).

political system. In both countries one or the other major party is sure to have a majority in the legislature. Thus in Britain 3 national parties—the Conservatives, the Labour, and the Liberals —put forward nearly 98% of the candidates and obtain over 99% of the votes. Of these, the first two put forward nearly 90% of the candidates and won nearly 97% of the votes. If, therefore, the Conservative Party gets divided, there is bound to be a Labour Government; and if a serious split occurs in the Labour Party, there is bound to be a Conservative Government.[1] Generally speaking a state has a two party system if not more than two parties at any given time have a genuine chance to gain power; if one of these is able to win the requisite majority and stay in office without help from a third party, and if over a number of decades two parties alternate in power. In the case of the U. K. the two party system is not really the outcome of a specific institution such as the Cabinet. It was Lowell who propounded this thesis in 1896[2] which he himself revised in 1912.[3] In 1896 he suggested that the Cabinet system generates and encourages th 2 party system. In 1912, he wrote : "Neither the parliamentary system nor the Party system, neither the responsibility of ministers to the House of Commons, nor the permanent division into 2 parties grew up in a day... Little by little with halting steps the rivalry of parties built up the responsibility of ministers and this in turn helped to perpetuate the party divisions, for the parliamentary system, like every other rational form of government reacts upon and strengthens the conditions of its own existence." It may be pointed out that the clustering of political actions into two major groups occurred at an earlier date than the emergence of the Cabinet and could not have been caused by that institution. The central principle of the Cabinet that the Crown should select as ministe
majority could
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it was the part,
Again, it is a fact that virtually all the countries of continental Europe which have adopted Cabinet government have multi-party systems. The Cabinet, *per se*, therefore, could not have been the prime cause of the 2-party system in Britain. It is sometimes argued that in Britain it is the Cabinet's use of the power to dissolve a Parliament which has discouraged the formation of more than two parties. This power to dissolve, it is contended, "gives the Party in power a firm grip over its members in the House of Commons, and discourages their trying any insurrections or new ventures, since re-election is a troublesome and un-

1 Daniel Wit : *Comparative Political Institutions*, p. 224.

2 Lowell : *Governments and Parties in Continental Europe*, Vol. I, 1896, pp. 7'

3 *The Government of England*, Vol. I, pp. 457-458, Vol. 2, p. 86.

4 G. M. Trevlyan : *The Party System in English Political History*, Roman 1926.

certain matter." "In doubtful British Constituency" it is further argued, "winning an election is difficult, and the support of a majority party is almost a necessity. The party in power keeps its members in the House from straying, and the opposition party is well disciplined because this is the only way that it can hope to come to power."[1]

But even this explanation, though quite persuasive is yet unconvincing. Those who take Gosnell's line of argument refer to the example of France and suggest that the disuse of Cabinet's power of dissolution enabled the French Legislature to dominate the Cabinet and encouraged intrigues, factions and a multi-party system. Now these arguments seem to assume that a ministry is better equipped to enforce party discipline in its ranks if it has the power to choose the hour of fresh elections. It is precisely this assumption which is not all warranted by facts or logic. Party discipline rests on considerations least connected with the Cabinet's power of dissolution. It rests, *inter alia*, on the gigantic costs of election; the dependence of a member of legislature on his salary, and the obtaining of party tickets. A member, in fact, is hardly dependent on his constituency for he can belong to Gujerat and contest a Parliamentary seat from Bengal. He depends on the leadership of the party. Indeed, one may conceive a situation in which a Cabinet has no power of dissolution and yet there is the utmost party discipline and there is a two-party system as strong as in Britain. In New Zealand, for example, from 1889 to 1951, the power of dissolution was never used and elections were held regularly every 3 years. The Party discipline did not suffer and the two-party system worked most efficiently. It may be argued that it is not the actual use of the power of dissolution but the mere threat to use it, that works the trick. This is a mere speculation and represents an extremely far-fetched and flimsy reasoning. The Power of dissolution or the threat to dissolve has not presented party splits in any modern state. In France, the power of dissolution was explicitly provided in Art. 5 of the Constitution of February 24, 1875 and except for once in 1877 was never used. And it was never used "because the structure of the party system precluded the use of its potentialities." We may thus conclude that the 2-party system does not rest on the theory of Cabinet's power of dissolution.

But does it rest on the nature of the electoral system? The popular notion is that it does. It is argued that the simple majority voting system with single-member constituencies leads to 2 parties while proportonal representation encourages multi-party system. The existence of a two-party system in Britain, Neumann writes, "is a historical accident which the plurality system of elections and the single-member constituency (district) have helped to preserve. Under the British (and American) electoral system third party candidates are not easily elected because a

[1] Harold F. Gosnell : *Democracy : The Threshold of Freedom*, 1948, p. 243.

plurality is sufficient to send a candidate to the House of Commons."[1]

Now, this argument is, again, not supported by facts. In Britain, the two-party system had emerged long before the single-member constituencies were introduced. Prior to 1832, of the [illegible] 74 were returned from [illegible] in 1885 that this sys- [illegible] ine of the Liberal Party in Britain which Ramsay Muir and others attributed to the electorate system is really due to other factors.[2] The Liberal Party declined because its historical mission had been fulfilled by the end of the 19th century. It was a spent bullet in the 20th century. It failed to proffer any solution to the economic challenge of our times—any positive programme to answer the demands made by the newly enfranchised masses. Finally, if the decline of the Liberal party is professed as a proof that the British electoral system perpetuates the two-party system by eclipsing the minor parties, how and why did the Labour party ever succeed in getting a start at all ? If single-member district plus plurality victories lead straight to the two-party system, why did the adoption of *Scrutin d' arrondissement* in 1927 not create two parties in tnat country ?

In fact, the thesis that the two-party system is the outcome of political institutions and election devices is unhistorical, illogical and even perverse. Witness, the amusing conclusions at which Mr. Ramsay Muir arrives. His argument is : In Britain, the Cabinet is a dictator. It is a dictator because it is backed by a brute majority. This majority is the gift of 2-party system. This 2-party system is the result of the election system. The existing election system must, therefore, be replaced by Proportional Representation which will encourage multi-party system and Coalition governments and these will be more responsive to public opinion and more democratic. A mere exposition of this logic is its convincing refutation. Every single step in this reasoning has a twist.

The truth is that the two-party system is the outcome of conflicting social and economic interests which determine the form as well as the contents of political institutions. In a country like India we have institutions of parliamentary democracy but during the last 13 years we have been no nearer the two-party system. A search for explanation will inevitably lead us to the absence here, of that homogeneity of society the presence of which in Bri-

1 Neumann, *European and Comparative Government*, McGraw Hill Series in Political Science. pp. 151-152. Also refer to V. O. Key, *Politics, Parties and Pressure Groups*, New York, pp. 218-219. Mr. Key's argument is "in a single-member."

2 Refer to Ramsay Muir, *How Britain is Governed*. Also see E. E. Schattschneider, *Party Government*.

tain ruled out the possibility of a multiple splintering of parties. We have 14 languages officially listed, with about 600 dialects; various regions, castes and communities. We have sharp economic cleavages and num [illegible]
the population is [illegible]
are there but they [illegible]
speak one language. [illegible]
the Scots and the Ulster Irish "are aspects of a common loyalty to the Queen."[1] The result has been an agreement amongst the people on fundamentals. On a number of questions which are of basic importance to society, "such a preponderant majority existed on one side of the question that the area of practicable controversy was much restricted, and conversely, the remaining issues on which two sides were opposed in nearly equal strength were few and the divisions between them fairly simple." Religious discussions at one time were serious and they had a very considerate impact on the origins and development of parties in Britain. On this point, Jennings has commented : "There are of course religious differences. . . . but the differences between Roman Catholics and Protestants are small compared with the differences among the other great religions of the world, Islam, Hnduism and Buddhism".[2] This is a curious statement of religious values and seeks to underestimate the sort of religious dualism which developed in England in the 18th Century and which was carried forward straight into a 2-party system. G. M. Trevelyan has emphasized this aspect so prominently in the following observations : "From the Restoration to the latter years of the 19th century, the continuity of the two parties in English politics was very largely due to the 2-party system in religious observance, popularly known as Church Chapel. The dualism of the English religious world, and the disabilities imposed on dissenters, form a large part of the explanation of the peculiarly English phenomenon of two continuous political parties in every shire and town of the land, surviving even when obvious political issues seem asleep or settled, or when the party programmes seem in certain important respects to have changed hands."[3]

Are we, then, to conclude that the two-party system in Britain was caused by exclus[illegible] factor ? Now this would be a completely wrong [illegible] flict was organically related to the [illegible] to conflict of economic interests with [illegible] of agreed fundamentals. The landown [illegible]
Tories, and the Commercial [illegible]
The country squires, were mostl [illegible]
elements were largely non-conformists. With the [illegible]

1 The Sectionalist party of the Irish Nationalists led by Parnell is an exception which proves the rule.

2 Jennings, *The Approach To Self-Government*, p. 31.

3 G. M. Trevelyan, *op. cit.* p. 27.

trial revolution agriculture receded in the background and industry came to the fore. The old alignment underwent a corresponding change, and in the process the Liberal party went into the dolldrums. The conservatives now aligned themselves with the commercial interests, while the Labour Party took up the cause of the industrial labour. The Irish question caused a further split in the Liberal Party. Thus after a temporary phase of 3 party system, Britain, after the Economic Depression of 1929-30 which gave the last kick to the Liberals, reverted to the 2-Par y system.

TWO PARTY SYSTEM IN THE U. S. A.

In the United States from the very beginning of the national government there was discernible a division into two major political groups. One—the Federalists—was led by Hamilton and dominated the government until 1800, in general promoting measures designed to favour the investors, the merchants, the manufacturers, and associated groups. The other—the Republicans—was led by Jefferson. Until 1800 it was in opposition. Its power rested on [illegible] ry limited support from the [illegible] disappeared and with that [illegible] h the Republican leaders became more conservative so that by 1828 signs of revolt could be clearly noticed. In 1828, Andrew Jackson was elected President and a new alignment on old lines appeared. Jackson welded the farmers of the West and South with the masses of the East to form the Democratic Party. It revived the left wing policies of the Jeffersonian movement "by destroying the National Bank, reducing the tariff, and democratizing the administration." On the other hand, Henry Clay and others brought round the bulk of the federalists into the so—called Whig party. This Whig party could not dig in and was eventually disintergrated by the slavery issue. The events leading upto and culminating into the Civil War effected a re-alignment of parties. The Democratic Party [illegible] in the [illegible] the im[illegible] election each party disclosed a rift in its rank and it apoeared that both were heading towards a realignment. The Democrats were divided into the hostile camps of a Conservtive leadership in the South and in the Northern urban and rural circles. In the Republican Party, finance and industry was faced with the increasing hostlity of Western agrarianism. The Economic crisis of the thirties intensified these forces so that the Democratic Party led by F. D. Roosevelt became the party of the left wing urban and insurgent strongholds of the West and Middle West.

In America, then, the two-party system seems to have been [illegible] rule. Minor parties are usually quite unimportant, although [illegible] may supply planks for the major party platforms. Usually [illegible]

disappear rather quickly, although a third party, the Republican displaced the Whig Party to become a major organization. The minor parties are there and they do quite well in local elections, and even in the election of the Senators and Representatives. In these as well as in the conduct of Congressional business, "the size and diversity of the U. S. A. have fostered a multiplicity of groups more akin to the politics of France than of Britain." But, then, the U. S. A. is a Presidential State, and "every four years, in order to capture Presidency all these groups amalgamate into two large and loose Coalitions—like federal unions within a federal Union." Nevertheless, even during a presidential election the cohesiveness of the two U. S. parties is nowhere near the discipline of the two British parties. It is for these reasons that it is sometimes suggested that what they have in the United States is not a *two-party system* but *two party systems.*

On the national level, then, the pattern is roughly the two-party pattern. In the U. S. A. also, it has been the outcome of historical, economic, social and political conditions of national life. For one thing, the British dualism of the 18th century to which we earlier referred, undoubtedly influenced the Americans. We have also referred to the division caused by the economic factor—the Federalist party of Hamilton anchored to the commercial, industrial and financial interests, while the Jeffersonian Democrats clinged to agrarianism. Postively, certain social and economic facts prevented the growth of multi-partyism. While the electoral system had not been a conditioning factor in Britain and in many other countries, in the U. S. A. it places very real obstacles in the path of the third party. The employment of electoral techniques like the single-member district with plurality election, and the majority election of the President in an electoral college bolstered the two-party system by minimizing the opportunities of a minor party to capture a significant share of power. The Presidential electors, in fact, fail to reflect the true popular voting strength of even the major parties. Now, if the State were made the electoral district and all representatives were elected under a system of proportional representation, the popular strength of a third party might be rewarded by the election of one or more nominees to Congress. It would also gain electoral college votes in proportion to its strength in the electorate. Again society has been, on the [illegible] the debate regarding the constitut[illegible] merged a [illegible] accept- [illegible] restricting the area [illegible] ions to public problems. In the U. S. A. no parties have been formed (except for the Communist Party which [illegible]) to [illegible] struggle on behalf of some other [illegible] has caused so much of turmoil [illegible] In the U. S. A., nearly the whole society has come to accept, for good or for bad, the principles of representative government,

religious freedom, separation of powers, federalism, and the economic philosophy of Capitalism. Neither parties based on national origins, nor ecclesiastical parties have arisen. The area of agreement has been so large that minor parties are either driven to extremes in their programme which fail to gain popular support or are left to organize "dissent to an extent sufficient to cause the major parties to adopt the main features of third platforms for fear lest the minor group gain a balance of power or for fear lest the other major party capture the dissenting vote itself."

THEORY OF CONSENSUS AND HATSCHFK LAW

Thus it happens that in the U. S. A., the differences between the 2 major parties are not on fundamentals. The leaders of both parties "expound a long series of principles in their official platforms, but most of these principles are so vague as to turn out to be almost identical for both parties on closer inspection." [illegible] is, of course, a pattern of class allegiance. Recent Presidential campaigns would seem to indicate that Democratic candidates obtain the support of the bulk of town -income groups while the Republican Party is supported by about 75% of the upper income group. But the latter has not only great support in rural North but it also wins working-class support. It is characteristic of the U. S. that the Labour has no party of its own and prefers to pursue a policy of supporting friends and opposing enemies regardless of party affiliation." The Democrats have the support of practically the whole South and in addition they draw heavily on Northern working class circles, as well as from rural areas and business groups. (In the Presidential elections of [illegible], John Fitzgerald Kennedy (Democrat) clinched his victory by carrying the key states of New York, Pennsylvania, [illegible] and also such others as North Carolina, Georgia and [illegible]. Among the States that supported Nixon (Republican) were [illegible], New Hampshire, and South Dakota. [illegible] the U. S. parties have multi-class and multi-[illegible] composition. [illegible] parties include left and right wing [illegible] and conservative [illegible]

Kennedy's success. But immediately after the election, Kennedy successfully restored the climate of trust and confidence which is fully reflected in his nomination of the Cabinet.

We have just referred to the party programme in the U. S. A. All political parties see to capture power on the basis of some programme which they put forward before the electorate and on which they obtain its mandate. The alternative programmes of parties are not static. They are just the response of a party to the urges of the people and since people's aspirations are in a state of flux, the programme also keeps on changing. These programmes, in other words, explain the law of development of parties, the principle of their intrinsic growth. These programmes are not absolutely exclusive because the parties in democratic states are, after all, not warring groups. They agree on fundamentals. In fact each party influences the other and in many cases some thing for which one party stands today may be accepted by the other party tomorrow and for a time the difference between the two parties may be very little, merely formal. Mr. Chester Bowles in a recent book has brought out this law of party development in the United States.[1] He has suggested that "as the two major parties shift from a dominant to a minority status within the framework of a broadly accepted code of conduct, they follow a surprisingly consistent pattern. Both of them carefully watch the process of the "new public consensus." One party, however, clings to old issues and old habits of mind and becomes the party of Memory; the other becomes the advocate of the new consensus and becomes the Pàrty of Hope and with a definite social and economic inventiveness is rewarded with successive victories at the polls. Ultimately, however, the minority party (the Party of Memory) produces leaders who begin to see that for better or for worse the new ways have come to stay. They understand that as long as their party exists the changes which have taken place and which now have general public support, will have nothing to look forward to except further defeats in national elections. "Thus they begin to embrace the measures advanced by the majority while seeking to re-affirm their non-political identity through promises to handle those measures with greater effectiveness, honesty or political finesse. . . . .But a political line drawn on such a basis is as difficult to maintain as a line drawn through water. What generally ensues instead is a marktime period of apathy and boredom among the voters as the stated differences between the parties diminish. Political personalities become more important than issues, and the election-day fortunes of the two parties alternate accordingly. Eventually, however, a critical domestic or international situation develops which demands a new approach. The opposition party, more sensitive to the new challenge confronts incumbents with a coalition of national forces expressive of a new consensus and powerful enough

1 Chester Bowles, *The Coming Political Breakthrough*, London 1960, Chapter II.

to bring about a sweeping political break through. The cycle then repeats itself as the new dominant party, firmly based on the new national consensus, has its chance to write history."[1]

A parallel law was noticed at work in Britain by Hatschek who suggested that first a party with a distinct and coherent programme comes into power. This programme gradually loses its appeal in the course of the party's efforts to realize it. "Some parts turn out to be impossible of achievement, others arouse the antagonism of some of the party's own following when the practical implications become apparent. The party then breaks up into divisions. This disintegration offers to another party, irrespective of whether it has evolved a distinct and realizable programme or not, the chance of concentrating and unifying its forces; then that party gains ascendancy. After a while, this party is subjct to the same process of disintegration. This means that once party organizations have come into existence, the existence of a realizable programme is no longer necessary. A party cannot only continue to live, but may be able to displace the other party in government, merely because its organization under a powerful leader is more effective than is that of the other party. The party lives by the strength of its organization, and therefore, the organization is the main thing, the programme a side issue."[2]

Now, if this law is valid, it is obvious that minor parties have no chance either in the U. S. A. or in Britain. The two major parties in both countries constantly sap the strength of minor party programmes by adopting and enacting their more popular platform planks. Large groups of voters—have either no liking for either party or desert both and become "independents" who constitute the "floating vote" and serve as a balance wheel between them. In the U. S. A., for the same reasons, the party system is characterized by extreme decentralization. The vastness of the country, the great regional diversity of interest and culture and the consequent federal solution to the problem of territorial integration have all led to party decentalization. The circumstance that the national legislators, and even the President are selected primarily through action taken at the state level tends to things in the same direction. The net result of this combination of push federalism and political practice has been "to make the major American political party a loose association of state organization banded together periodically to fight for control over the Presidency in competition with one or the other such association."

THE MULTI-PARTY SYSTEM : ITS TYPES

In m··t of the continental states as well as in countries which have been recently liberated, we have what is called a multi-party system. From one point of view there is a "twilightzone"

1 *op. cit.*, pp. 22-23.

2 Car H. Friedrich, *Constitutional Government and Democracy*, p. 417.

between the bi-party and multi-party systems. As we noticed, even in the U. K. and U. S. A. there have been middle groups which, between the two traditional parties, operate and sometimes hold the balance between them. This is sometimes called the *"two and a half party system."*[1] The typical example of the multi-party system is France. But a variant could be found in the Weimar Republic where there were many parties but each of them presented a United front to the others. In Western Germany, one can see another variety. Here we have two powerful groups—the SPD and CDU,—alongwith several smaller parties operating with the major groups but unable to assume power on their own. This is called the *"bi-polar multi-party system"*. This situation is, quite obviously, similar to the "two and a half party system". In Scandinavian States "one party has held a bare majority (generally Labour) or almost a majority over all other parties, whereas the different groups of the opposition have operated separately and sometimes shown greater or lesser willingness to cooperate with the major group. In countries like India, Ceylon, and Nepal society is stratified, loyalty to leaders rather than to principles is the norm, communalism and communism tend to disrupt the homogeneity of parties. In India there has been one-party rule (Congress) at the centre and almost that in states. There are other groups—the PSP, the Jan Sangh (communal in character), the Swatantra, and the Communist Party. In States like Travancore-Cochin and Andhra where the Congress could not secure majority, it was confronted by the combined strength of many forces. But in the mid-term elections in Kerala in 1960, the Congress had to unite with all the elements including the Muslim League in order to defeat the Communists. In Pakistan the Muslim League dominated for 7 years and when it lost control of East Pakistan in 1954, it was defeated by a coalition, not by one solid party. Similarly, in Ceylon, the opposition parties are just splinter groups. In such states, therefore, we have a type of the multi-party system at once different from that in France, or Switzerland, or Italy or West Germany. While in India there is hardly any alternative to the Congress rule (despite the Crescendo of the Swatantra Party), in the European States no one party holds an unchallenged monopoly of political power.

POLITICAL PARTIES IN FRANCE AND ITALY

In France there are over a dozen political parties; in Italy eight are represented in the chamber of Deputies; and in West Germany seven in the Bundestagaud. This is despite the recent electoral laws in these countries—laws which were designed to encourage alliances among the moderate parties in order to make it difficult for the extremists on the left and on the right to win any seats. In these states a party may be formed by a few hundreds

1 Gunnar Heckscher, *The study of Comparative Government and Politics*, 1957, p. 153.

and it may not have any roots in the people. It may be formed just by a few members in the legislature in order to secure membership in a Committee or a seat in the Cabinet. Most of these parties have neither the resources nor [illegible] of the major parties in Britain or [illegible] never a time in the 70 years of the [illegible] or chamber group came near to having a majority of deputies. Governments have been lacking in coherent programmes. The uneasy relations between the army and the civilian governments contributed to party confusion. The French parliamentary history is telescoped into a single century so that the French people have not acquired the requisite experience to manage the difficult and intricate working of constitutional representative government. Unlike Britain, in France parliamentary institutions have been the product of a series of revolutionary changes. French democracy, moreover, has been largely based on the declared philosophy and programmes propounded by the French political theorists of the 18th century so that French politics show more doctrinal fervour than is found in Anglo-Saxon nations. While in Britain, political convenience has been the guiding star, in France republican and representative institutions were born of conflicts and each left a residue of political sentiments in the memory of the people. In Britain parliamentary democracy once firmly instituted remained a stable way of organizing political sentiment, in France the token of persisting ideals behind political disturbances appeared in the continuance of attitude supporting the various forms of government which held power during the 19th century. The main result has been that the French political community harbours many groups which are irreconcilable, whatever the existing forms of government. When a political crisis arises, there is not merely a demand for change of leadership but an attack on the existing constitution. As we stated earlier, in Britain social and economic development proceeded alongwith political evolution so that parliamentary government based on the two-party system warmly responded to the ever growing social and economic needs of the people. In France, the promises of social change implicit in the programme of the first revolution, were never fully realized. The working class demands for improvement of working conditions were confronted by the reluctance of the business community to launch reforms. To this was added the natural conservatism of the agricultural Community. With an unusually large proportion of small farmers, social and economic issues remained unresolved and they complicated the party situation and created further divisions in the electorate. Hence the Multi-party system characterized by intransigence and extremism of the left and the right.

In Italy, political and economic circumstances combined to create chaotic conditions. The country even now contains [illegible] great mass of politically uneducated citizens and there is a seri[illegible] lack in all classes of that general political maturity on w[illegible]

parliamentary democracy must be based. In the political field as in the economic, there is a great cleft between North and South. In the North, the large working population of the big towns is reasonably well organized and interested in political problems and there is a small but politically active middle class of lawyers, journalists, businessmen and professional people. In the South, the population, by and large, consists mainly of the very poor, and illiterate landless peasants. Labour, here, is hardly organized at all and there is practically no real middle class. An effective party sysem has thus always been missing in Italy. At the time of Cavour's death, there was no real party system and Depretis Prime Minister (1876-89) only created a dictatorship of the Cabinet and bureaucracy. Giolitti did not include any real improvement and when adult suffrage was instituted in 1918, popular rule existed only on paper. From 1922 to 1943, there was Fascism, with its one-party system and no organized opposition after 1926. The Fascist rule and the years of German occupation had driven politicians underground. Underground policies and participation in the Resistance movement made a poor preparation for peacetime political pursuits. Since 1948, the largest opposition party has been communist and it does not agree, on fundamentals, with other parties—the Christian Democrat, the Socialist Party, the Liberal, the Republican, the Socialist United Party, the Monarchist and the small neofascists called the Italian Social Movement. But it must be stated that Italy has a somewhat simpler political party pattern than does France, for in Italy, there has been the dominance of 2 great parties—the Christian Democrats and the Communists. If the former could successfully rehabilitate national economy and if the moderate socialist forces could consolidate their Unity and forge a "loyal opposition" democracy in Italy may still survive. But both these conditions are extremely difficult to materialize, for the Italian economy is very much inferior to the French. Until this is done, the problem of obedience which is basic for the success of democracy can hardly be solved.

POLITICAL PARTIES IN INDIA

This problem of obedience is even more difficult of solution in the recently liberated countries. In Britain and the U. S. A., the answer to this question, as we noticed earlier, has been determined by constitutional convention. In a democracy, as Mr. Panikkar said, the final authority is, in theory vested in the will of the people, in practice it is vested in the decision by the majority in parliament.[1] The majority decision, that is, has a finality not to be challenged. These decisions constitute the norm of political life. The majority rule, on this showing, is as vital as an independent opposition and both have to be responsible. These concepts provide flesh and blood to parliament to whose authority all other powers have to submit. The recurring revolts

1 *The Afro-Asian States and their Problems*, p. 18.

in Indonesia, the chronic rebellions of organized groups in Burma, the emergence of dictatorship in Pakistan, the chaotic conditions in Ceylon, and the overthrow of democratic regime in Nepal are all the examples of failure to solve this problem of consent and obedience. In India, the situation though more stable is yet not free from difficulties.

While we have given to ourselves parliamentary institutions of the Western type, we have not gone through those problems of which these institutions were the product. In India, the struggle of parties has not been against an indigenous monarchy or aristocracy; it was a struggle against foreign imperialist rule and this struggle provided a broad umbrella, under which all interests could stand against a common foe. Societies that gradually developed their political systems had no ready-made ideologies and had to tailor them to size. In the second half of the 20th century ideologies are ready-made which parties can easily pick up according to their taste if not according to size. While in the United Kingdom, suffrage was extended in slow instalments, in India it was granted by a stroke of pen. While in the U. K., therefore, interests were clearly differentiated and were organized gradually, in India history did not permit this evolution. There is thus a measure of unpredictability in the behaviour of these groups, and consequently, a degree of latency in Indian politics. Finally, in India as in other recently liberated countries, "national movement was later transformed into a national party". The role the National Congress played here was played by the Muslim League in Pakistan, the Anti Fascist People's Freedom League (A.F.P.F.L.) in Burma, the Neo Dastur in Tunisia, the Istiqlal in Morocco, and the National Liberation Front (NLF) in Algeria. But the growth of parties has not necessarily been on democratic lines in many countries. The Wafd, for example, had hardly any national claims in Egypt. In India, the National Congress began as a pressure group and functioned as such till 1919. The appearance of Gandhi, the impact of the Bolshevik Revolution in Russia, the weakening of imperialism caused by the First World War

liberation movement by 1920. It continued in this capacity till 1947. It became a broad-based organization, including business, labour and peasantry. It started penetrating the secluded and closed frontiers of the rural India. It permitted within its fold followers of all religions, people having diverse economic interests, revolutionaries, radicals, moderates, orthodox and reactionaries who could speak and understand the language of nationalism and patriotism. The Muslims, Sikhs, Anglo-Indians, Parsees and the Scheduled Castes had their own separate organizations too. After 1936, the national Congress also started its career as a political party and by 1947 when power was transferred, it became exclusively a political party. In 1945, the communists had been expelled from its ranks and in the new cons-

titution of the Congress (1948) members were forbidden to join other political groups. The Socialists led by Dr. Jai Prakash Narain and Ashok Mehta left the Congress in 1948, and by the time the first general elections were held in 1951, another chunk was cast off with the departure of Acharya Kripalani from the Congress, who founded the Kisan Mazdoor Praja Party (later renamed the Praja Socialist Party). In 1959, yet another section of the Congress—a group of old leaders (who all their active life were in the Congress and served as governors, ministers and in one case as the Governor-General of India) left the Congress and formed the Swatantra Party. It is true that most of the leaders whose names had become legendary and who have been leaders not of a group or section or faction but of the people, stuck to the Congrss Party—men like Nehru, Patel, Maulana Azad, or Dr. Rajendra Prasad. Lesser persons—men like C. R. Rajagopalachari, Acharya Kriplani, Dr. Jai Prakash Narain, or Dr.R.M. Lohia, left the parent body and formed other parties.

Their withdrawals did not weaken the Congress party either in respect of leadership, resources or following in any considerable measure and the Congress Party even today is the strongest, the best organized and the most popular party in India. For a time it was felt that with the death of Nehru, the Congress would disintegrate. This has not happened. L. B. Shastri was unanimously chosen to lead. After his death, leadership was contested and Mrs. Indira Gandhi won. Nehru's death was followed by the emergence of K. Kamraj as an influential leader ably assisted by State Chiefs. At present, the strength of the Congress lies in its mass peasant following, support of business and industry, its claim to administrative experience, its policies of Planning, Secularism and Socialism within and Non-alignment outside, a fairly stablilized leadership in different states in the Union and the support of the bulk of the educated people and middle classes as well as the peasants in India. The Congress, [illegible] elections without Nehru

[illegible] e other parties wedded

[illegible] e Socialists, the P.S.P., and the Swatantra Party are more important. None of these is a major political force today. They are led by persons with frustrated ambitions and they have no roots in the masses. Their weakness is only an expression of their failure to exploit the mistakes of the ruling party.[1] Their organization is perfunctory and they are a mere series of connections: a motley crowd, with no cohesive factor.

The P. S. P.—The P. S. P. and the Socialist Party merged in U. P. in December, 1962 and formed a United Socialist Party

1 When they successfully exploit the mistakes of the Congress Party, they can easily defeat the Congress candidates as the victory of Kripalani (Amroha) Lohia (Farrukhabad), and Masani (Rajkot) in the bye-elections of May, 1963 illustrate.

in the 4th General Elections will rise to the occasion and, guided by those who see the dangers implicit in the situation, will refuse to give a fresh lease of untrammelled power to the Congress Party which would be tantamount to perpetuation of one-party rule and will give their support to the Swatantra Party candidates wherever they offer themselves for election so that democracy may be safeguarded.

The performance of the Swatantra Party at the third General Elections, however, does not give promise of a strong opposition to the Congress. In Andhra it secured 19 seats; in Bihar 50; in Gujerat 21; in Punjab 3; in Madras 6; in Madhya Pradesh 2; in Maharashtra, West Bengal and Assam none; in Mysore 9; in Rajasthan 36; in U.P. 15. At the Centre it secured only 18 seats.[1]

THE CONGRESS

The Congress has not only the wide and high war-chests but also the electoral system and the legal frame work to help it. In India we have legislation against subversive activities by organized groups which at any time may be related to the political parties and have a definite bearing on the party system. The Preventive detention legislation as well as the law of Company's donations to the parties may be quoted as examples. The issue of linguistic states failed to weaken the Congress materially. The fear that after Nehru, the Congress Party would disintegrate and India will go the way other Asian countries have gone has been proved unfounded. Nothing serious has happened and the main bases of a secular democratic socialist state laid by Nehru have endured. The Congress Party has passed through many stages and survived many crises. The 22-days war between India and Pakistan in Sep-Oct. 1965 was the most severe ordeal for India's democracy and secularism. There was not one single communal trouble anywhere in India and the Muslims fought as patriotically as any Hindu. The Congress, of course, has cracks within it today, differences among its ranks there are as are bound to be in a democratically organised party. But it has definitely acquired scientific approach, and the socialistic approach, thanks to the policy of planning. The process of political education is constantly going on through free elections, press, personal meetings between the leaders and the people, policies of planning, village Panchayats, the Co-operative movement, and parliamentary institutions. These constitute the factors of democratic base in India, and they account for the enduring stability after Nehru was gone. We may quote what Nehru told Karanjia on the subject :

"Once the people are given a proper democratic base or moorings, it should be difficult for the mass of the people to be

1 Its General Secretary, Mr. M. R. Masani was elected to the Lok Sabha in a bye-election (May 1963).

diverted or reversed. The pace of progress could be slowed down or accelerated, of course, but I don't think it would be possible to take a whole people backwards. . . .The revolution. . . .may be weak and incomplete, but our plans, the idea of planning itself, have set in motion certain forces which cannot be stopped or reversed. At the moment the best insurance against any throw back is the 'hope-level' of our people. It might be possible to frustrate this by making the people lose hope and faith. But once the Second and Third plans go into action, we shall be breaking through the static barrier of inertia, poverty, and under-development and taking off—that is, our economy will begin to work on its own steam power. With this development backed by the will of the people the effectiveness of which is secured through parliamentary democracy, it should not be difficult to maintain the continuity of our experiments."[1]

The Congress Party, it must be realised, is facing serious internal problems. In Madhya Pradesh and U. P. the organization wing of the party has been in a frontal conflict with the parliamentary wing. In U. P. the former Chief Minister Dr. Sampurnanand after sponsoring a candidate for election to the State Congress Presidency and losing the contest tactlessly played into the hands of the rival group. He had declared that if this candidate lost the election, he would deem it a vote of no-confidence against his Government and would resign. This was a remarkably absurd position for a politician to take. The leader of the rival group—Mr. C. B. Gupta, the following Chief Minister, accepted the challenge and inflicted a crushing defeat on Sampurnanand's candidate. Morally, Dr. Sampurnanand should have accepted the consequences of his stand albeit absurd without any fuss and should have resigned quietly. But his political ambition, feeling of anger against Mr. C. B. Gupta, pressures of his followers who wanted him to continue in office, and the intervention of the Congress leaders at the Centre—all these got mixed up. Prolonged negotiations followed behind the doors but the deadlock could not be resolved. The Legislature party was solidly behind Dr. Sampurnanand—he had not suffered a defeat in the Legislature, but dramtically, with the intervention of Mr. Nehru, the party elected Mr. C. B. Gupta as the leader of the Party. He was, however, not a member of the Legislature and had twice lost the election. In India, therefore, we had the rather unusual sepectacle of a man twice defeated at the polls, and not a member of the legislature, being elected leader of the Parliamentary party and for that reason being appointed the Chief Minister of the State. Of course, there have been cases even in Britain when in unusual circumstances, Prime Ministers have been appointed without a reference to people. Cases of Mr. Lloyd George in 1916, Mr. Ramsay Macdonald in 1931, Churchill in 1940, and Mr. Harold Macmillan in 1957

1 R. K. Karanjia, *The Mind of Mr. Nehru*, p. 67.

cited. Mr. C. B. Gupta was later nominated to the Legislative Council of the State and ultimately got in the popular House—Legislative Assembly by contesting and winning by comfortable margin a bye-election.[1] In July 1963, the so-called Kamraj Plan was accepted and Mr. Gupta was made to resign. He manouvered the election of Mrs. Sucheta Kripalani as the leader of the Legislature party and she became the Chief Minister. The conflict between K.P. Tripathi and Gupta factions continues unabated. There is some evidence which suggests that Mrs. Kripalani is trying hard to organize her own Group. But she continues to depend on Gupta's support. In Andhra Pradesh, and Orissa also the Congress Party has been confronted with serious difficulties. In Punjab, the Akali Dal and in Assam, the Bangalee problem subjected the Congress to terrible strain. On top of this former President of the Union Dr. Rajendra Prasad—raised the storm of a controversy about the constitutional position of the President vis-a-vis the Council of Ministers headed by Mr. Nehru. The death of Pandit Govind Ballabh Pant, the Union Home Minister, was another blow to the Congress. Nehru's death in 1964 and Shastri's sudden death in January, 1966 at Tashkent have been disastrous blows. The rising prices, the mounting food crisis, the Mizo rebellion, the West Bengal food riots in March 1966, the serious situation in Kerala the Punjab riots in the wake of the Congress Party's decision to concede the Punjabi Suba are straining the limited resources of the Congress Party. They have a most difficult task ahead and if Mrs. Indira Gandhi can still show some firmness the situation may still be saved. There are, therefore, danger spots and there is the need for caution.

In the third general elections (1962) the Congress Party was returned to power in all the States and at the Centre. In the Parliament it captured 362 seats. All the Cabinet Ministers who contested, were elected and only a Minister of State, three Deputy Ministers and a Parliamentary Secretary suffered defeat. This is significant because heads of all other parties lost the election. A. Rama Rao and J. Joshi of the Jan Sangh, Ashoke Mehta of the P. S. P., N. G. Ranga of the Swatantra Party, Mahant Digvijay Nath of the Hindu Maha Sabha, N. Sivaraj of the Republic Party had to lick the dust. Acharya Krpalani lost the election very badly. S. A. Dange, K. T. K. Tangmani amd Mrs. Parvati Krishnan all went with the wind. The Congress emerged from the elections, with all its leaders at the Centre in triumph. In the bye-elections in Kerala and in Orissa, the Congress had already won. In the other 12 states, it succeeded in forming the government again. In Andhra it won 176 seas in a House of 300;

1 Afterwards, Mr. C. B. Gupta and Mr. A. P. Jain the P. C. Chief publicly disagreed on vital issues. The Congress candidate's defeat (Mr. Hafiz Mohd. Ibrahim) in the bye—election (Amroha) in May 1963 by Kripalani whose wife a Minister in C. B. Gupta's Cabinet was attributed to official sabotage encouraged by the then Chief Minister C. B. Gupta.

in Assam 79 seats out of a total of 105; in Bihar 185 out of 318 (25 seats less than 1957 election); in Gujerat 118 out of 154; in the Punjab 90 out of 154 (30 seats less than in 1957); in Madras 138 seats out of 206 (13 seats less than in 1957); in Madhya Pradesh 142 out of 288 (89 seats less than in 1957); in Maharashtra 214 out of 265; in Mysore 139 out of 208 (12 seats less than in 1957); in Rajasthan 88 out of 176 (31 seats less than in 1957); in U. P. 249 out of 430 (37 seats less than in 1957) and in West Bengal 157 out of 252. The greatest disaster of the Congress came in Madhya Pradesh where the Chief Minister—Dr. K. N. Katju—himself lost the election. It must be said that the main reason of the Congress debacle in Madhya Pradesh was the utter failure of the ageing Chief Minister to keep the Congress Party under control. In several states the Congress strength was reduced while the Communists and the Jan Sangh both gained. The Chinese invasion on India in October, 1962 was the first major challenge [illegible] to the steward- [illegible] ays of the attack [illegible] hitherto hidden and suppressed, came out into the open. At a rapid speed the crescendo mounted up and the Times of India, the Hindustan Times, the Indian Express and several other Journals controlled by Big Business began to attack Nehru, Menon, G. L. Nanda, K. D. Malviya and others of their thinking. The P. S. P., the Jan Sangh, the Swatantra, and the conservative sections of the Congress party combined together in crying for the blood of Mr. Krishna Menon who had defeated his rival Acharya Kripalani in the famous North Bombay elections by a majority of about 1½ lakhs. The motley crowd openly demanded the resignation of Menon and silently suggested a change of leadership. For a time it appeared that Nehru's position was in serious danger. But when the worst of the invasion passed off by November 20, 1962, Nehru could save the ship of the Congress from what appeared to be a total wreck. Menon, of course, had to go for having followed faithfully the policies formulated by Nehru with the consent and full acquiescence of his colleagues in tl [illegible] underground attacks [illegible] alignment, scientific [illegible] policies for which the [illegible] stands today. By ea [illegible] phant and his team st [illegible] Party and the People. The appointment of Y. Chavan as the Defence Minister only made the Big Business more jittery. The policy moves of Mr. Nehru during this critical period fully establish his claims, as perhaps the shrewdest living politician of his age.

Post Nehru Congress.—With Nehru gone, Shastri tried to move cautiously. He was fully aware of his own limitations. Gradually, he acquired confidence and the Indo-Pak conflict of Sep.- Oct. 1965 gave him a life's opportunity of showing his [illegible] During that period he grew every day in stature and [illegible]

Luck favoured him and he became the acknowledged leader of the nation. The day he was leaving for Tashkent in January 1966, he boldly accepted the resignation of his progressive finance Minister, Mr. T. T. Krishnamachari, and appoined S. Chaudhri in his place—a comparative non-entity. His tragic death at Tashkent caused an explosive situation. Nanda was sworn in for the second time in 2 years as the Acting Prime Minister. The battle of succession began and after many ups and downs, Kamraj gave up the effort for unanimity. Morarji Desai and Indira Gandhi contested the leadership election. With the help of State satraps, and the leftist elements in the Party and sitters-on-the fence—such as S. K. Patil and Atulya Ghosh, Indira Gandhi won the contest.

Soon after the Congress met at Jaipur for its 70th session. The eyes of the whole nation were focussed at Jaipur. They were watching with concern and interest the new Prime Minister's efforts at evolving progressive and positive policies so that the Congress Party might be able to deliver the goods It is obvious that in the post-Nehru phase the success of the Congress would depend upon achieved goals, not on pledges and promises. The Congress has a record of broken promises and unfulfilled pledges. This could be suffered during Nehru's life, although even his personal leadership had begun to be challenged towards the end of his life. The reverses in the 3 by-elections (1963) had caused a flutter and the Congress Working Comittee had appointed a sub-committee in 1963 to go into the causes of reverses. The report of this sub-Committee had stated *inter-alia*.

"In the past, two things stood the Congress in good stead in the elections : its record of struggle and sacrifices. . . . and the existence of a widespread organizational network. This is a diminishing asset. The Congress has been in power for more than a decade and a half. It is now judged by the extent to which it has succeeded in solving the social and economic problems of the nation. There has been remarkable progress but fulfilment has not come upto the expectations raised."

This report together with a mood of despondency led to the so-called Kamraj Plan—an offer by senior Congressmen to resign the offices and revert to party work. The objectives were to relieve the senior leaders from governmental responsibilities, to bring younger blood in the Government and to make the Government itself a more effective agent of social change. Desai, Patil, Jagjiwan Ram, Shastri were among the more important leaders to be relieved. Nehru himself offered to resign but he was not serious about it. The C.W.C. subsequently set up a Committee to draft a resolution on Democracy and Socialism in a bid to radicalize the Congress policies. Its report was, however, most disappointing. The resolution was later on modified.

When the Congress met at Bhubaneshwar (68th Session) faith in Socialism was reaffirmed. But a day after the meetings at

Bhubaneshwar began, Nehru fell ill and was not available even for consultations. Nevertheless every body laid stress on the need of implementing policies. The Session ended on a note of optimism but there were misgivings, suspense and foreboding caused by Nehru's very serious illness.

The A. I. C. C. session at Bombay in May 1964 adopted the suggestions for implementing Socialist policies. Nehru, however, had fallen ill never to recover. The period of his illness was marked by drift in implementation, and *ad hoc* decisions. He could not intervene effectively, was not kept sufficiently informed and was even misinformed about facts and decisions.

His death on May 27, 1964, was followed by a period of uncertainty. The so-called Syndicate emerged and his successor L.B. Shastri was put to terrible pressure to abandon the late Prime Ministers' policies. The Congress ranks had not been imbued with its accepted political philosophy. The leadership, modiocre and lacking hold on the masses, began to show hesitations. The gap between promise and performance widened. The decision on land reforms was put in cold storage; bank nationalization was deferred, cooperativisation of rice mills and other processing industries was similarly postponed. Attempts were made even to change the size, character, direction and priorities of the 4th plan, and the machinery for planning appeared to have been downgraded. A vacuum had been created.

It was this vacuum which the Chief Ministers, State satraps and faction bosses sought to fill.

After Nehru's death they had acquired a say in central politics by arranging the consensus on the issue of succession. Factionalism had gripped the centre also. Policies and principles began to be subordinated to personalities and personal glorification. Nehru had kept out the so-called intermediaries between the leader and the people; his contact with them was intimate and deep. During the last phase of his life, his energies had began to fade and the by-elections of 1963 had symbolised this trend. So he seized upon the Kamraj Plan to revitalize the Congress by going back to policies and programmes. Those who were affected by this plan had not meant honestly to do the job. And as soon as he died, the old trends returned. Shastri was, therefore, elected by consensus. The syndicate, however, began to dominate and no national policy on any issue could be evolved; reaction and communal elements were appeased. Foreign lobbies became more active than ever before. Popular discontent began to mount. Kamraj and Indira Gandhi made some effort to put the Congress on the right track but these efforts were half-hearted. Pakistan was quick to exploit this situation. First in Kutch and then in Kashmir, the Pakistani armies tried to thrust in our areas.

The whole country rose like a unit to face up to the aggression actively supported by China. Shastri got the nd overnight became the accepted national leader. The

armies fought back and inflicted a humiliated defeat on the aggressor. In January, 1966, with the Soviet good offices an Indo-Pakistan summit meet was arranged at Tashkent and the Tashkent Declaration seemed to normalise the relations between the two countries. But Shastri died at Tashkent soon after signing this document. This time the method of consensus was not considered as feasible and in a straight contest Indira Gandhi supported by Kamraj and most of the State Chief Ministers defeated Morarji Desai. In Feb., 1966 the A. I. C. C. met at Jaipur to take stock of the situation and to give a lead to the country.

This Session, however, failed to achieve anything material. Shastri by his policies had given positive encouragement to vested interests and reaction. At Jaipur many protested against this trend. Indira Gandhi had not been able to introduce any basic change in the complexion of her cabinet. None of the recognised progressives in the Congress had been included. Ashok Mehta or G. S. Pathak or Fakharuddin cannot be said to be leftists. At Jaipur Mehta and Subramanium were sharply attacked, the former for his platitudes in his note on the economic situation and the latter for his abject surrender on the issue of fertilizer deal with the U. S. investors. No national food policy could be evolved. The discredited food zones were not done with. Nothing was done on such questions as bank nationalization, land reforms, and concession to monopolies. No resolution was passed on the current inter-national situation—Vietnam, Rhodesia, the proposed non-aligned conference at Cairo, Indo-Pak relations after Tashkent, the continued stalemate with Peking. It appears that the resolutionist lobby which is alsopressing hard for greater economic dependence on the U. S. has got the upper hand. Neither Kamraj nor Indira Gandhi can be said to have succeeded in stamping the Congress policies with any [illegible] The prospects of the Congress led by puny mind [illegible] d. The approach of Indira Gandhi is [illegible] l her policies are based on the prir [illegible] reaction. Even if she succeeds in retaining her leadership which is very precarious at present (March 1966) she may not be able to achieve much unless she is willing to take younger blood, talent and leftism with her. This is some thing which appears to be beyond her. The Congress may survive the 4th general elections but as a political force it will soon be fading out if youth does not enter it in a big way.

THE COMMUNIST PARTY OF INDIA

Another group of parties in India includes those who profess Marxism—the Communist Party of India, the Bolshevik Party, the Revolutionary Socialist Party, and the Peasants and Worker's Party. Of these, the best organized is the Communist Party of India. This, indeed, is the strongest political opposition to the

and prepared the way for a mid-term election in Kerala. The Sino-Indian border trouble and the utter confusion in the Communist Party caused by ideological differences between Moscow and Peking further contributed to the weakening of the C. P. I. In the Kerala bye-election held in February, 1960, they badly lost. The Party put 103 official party candidates and 23 Independents. All the 11 members of the dismissed Communist cabinet were nominated to contest the elections. The Triple Alliance (Congress, the P. S. P. and the Muslim League) secured 76.6% of the total seats and 43.3% of the total votes. The C. P. I. and allies secured 43.33% of the votes but got a little over 23% of the seats. Several former Communist Ministers lost their seats. The C. P. I could win only 26 seats in an assembly of 126. Three Communist sponsored Independents also won. The C. P. I. this time contested more seats, got more votes both in relative and absolute numbers, but fewer seats than in the elections of 1957.[1] Although the Congress Party won 63 seats and could form the Government, it entered into a coalition with the P. S. P. on the understanding that a Muslim Leaguer would be elected Speaker of the Assembly.

From the constitutional point of view, the dismissal of Communist Ministry in Kerala has been a serious blow to Parliamentary institutions in this country. The agitation against the Ministry was unconstitutional and the fact that it had the support of the Congress High Command and the Union Government add to the gravity of the problem. The Congress President was openly asking for Central intervention. In the Punjab, PEPSU, Andhra, Travancore-Cochin, Article 353 of the Indian Constitution was applied because in all these cases a government could not be carried on according to the constitution on account of a deadlock in the Legislature. In what circumstances can it be said that the government cannot be so carried on ? There are only two circumstances of this sort: one, where a government has lost the confidence of the Legislature and no other party is in a position to form the government; the other, where there is a danger of external aggression. In all previous cases where President's rule was proclaimed, the Governor could not secure a workable Government. The Ministers had resigned and there was no other party able to take the responsibility of forming the government, for none had a majority in the legislature. In Kerala, there was no danger of external aggression; the government had not defied the verdict of the Courts or the commands of the Legislature; the Civil Services were loyal to the government; the Ministry had a majority in the Legislature; the government had not disobeyed any Central directive. There was, of course, a mass upsurge fomented and fanned by persons occupying high positions in our public life. But the question is whether a mere law and

1 For a detailed analysis of Kerala Election refer to the Modern Review. May-June, 1960, pp. 374-380; 450-455.

order situation can warrant President's rule in a state under our Constitution. Worse lawlessness has prevailed in Madras, Bombay, U. P., Punjab and Assam. In all such cases the constitutional duty of the Centre seems to be to help the State Government in curbing the lawlessness. In Kerala, however, different standards were employed and a Ministry instead of receiving Central assistance was sacked by those who had fomented the agitation. After this, Constitutional propriety suggested that the same Ministry should have been asked to carry on as a care-taker government till fresh elections were held. All this was thrown to dogs. The local Congress leaders even demanded the dismissal of the Governor who attempted to act as a constitutional head in Kerala, and later was transferred to U. P. During election the Congress Party's alliance with the Muslim League was rather unprecedented. But having fought the elections in alliance, and won it, the Congress opposed the inclusion of a Muslim Leaguer in the Cabinet on which the P. S. P. insisted. The Congress opposition to this position was as odd a piece of this whole sordid picture as the rest. Explaining the Congress opposition to the inclusion of a representative of the Muslim League, Mr. Nehru complained that the "Muslim League's election manifesto had contained references which were highly objectionable." Now, Mr. Nehru must have been aware of these "objectionable references" when his party was courting the League. After courting and performing the marriage with gusto, he wanted to avoid the honey-moon Eventually, the drama came to a close with the oddest scene of a Congress-P.S.P. Coalition led by a leader of the P.S.P. (Pattom Thanu Pillai) which had only 20 seats as against 63 of the Congress and with the speakership promised to a Leaguer.[1] By September, 1962, the Coalition Government had become a house divided against itself. Great tension was reported between the Congress and the P.S.P. partners. In March 1960 Mr. R. Shankar, leader of the Congress Party in the Kerala Assembly had been designated Deputy Chief Minister. On September 25, 1962, the President on the advice of the Home Minister (L. B. Shastri) appointed Mr. Pattom Thanu Pillai (Kerala Chief Minister) as Governor of the Punjab. Pillai had already agreed to this suggestion and, therefore, accepted the appointment. Now as a leader of the P.S.P. he should have consulted the Party before agreeing to grasp the gubernatorial cushion. Mr. Ashok Mehta, Chairman of the P.S.P. bitterly complained that Pillai had not even informed him of what he was proposing to do. Nor did the Home Minister oblige the jittery Chairman of the P.S.P. by consulting him on the subject.

In 1959-60, therefore, the C.P.I. was in wilderness. The Kerala episode would have actually helped it, had it not been for the

1. In November 1961, following communal trouble at many places in M. P. and U. P., the Congress revised its position in relation to the Muslim League. The Kerala Speaker in obedience to the call of the Kerala Muslim League resigned. The League came out of this unholy alliance.

position taken by the madmen in Peking. None felt any sympathy for the C.P.I., although a large number of people were upset at the constitutional implications of the central intervention in Kerala. The C.P.I. failed to rise to the occasion on the issue of Chinese aggression on Indian borders. They were demoralised and the Chinese scandal of India and their malicious campaign against our leader completed their discomfiture. Had they taken a bold stand and openly condemned Peking, they might have created serious difficulties for themselves in the Communist world, even though they might have been able to save their face internally. As it is, they started a whispering campaign that the Congress Government was not interested in settling the border disputes with China in order to keep up the fires and beat the Indian Communists at the third elections in 1962. One wished the threat China poses today could be so simple. With the fall of the year 1960, the position of the C.P.I. became worse. Their isolation in the country was almost complete in 1961. The inner struggle between Pro-China and Pro-Russia elements continued in proportion in which the Sino-Soviet ideological conflict grew in dimensions. The rigid thinking characteristic of the C. P. I. prevented them from taking a realistic view of the grim situation on India's Northern borders and the leadership miserably failed to keep in tune with the people's aspirations. On October 20, 1962, China committed naked aggression on Ladakh and NEFA and the country was faced with an unprecedented situation. Within a week Emergency was proclaimed by the President and Defence of India Rules were promulgated. In large numbers the Communists were arrested and the Rightist forces started indulging in acts of lawlessness. The C. P. I. office at Delhi was raided. Some

C.P.I. was complete.

In this climate the National Council of the C.P.I. met at New Delhi and on November 1, 1962, passed the resolution entitled "National Emergency Arising out of Chinese Aggression" in which they, at last, cast off their reserve and decisively and strongly condemned Communist China. The Peking-Moscow ideological battle now engulfed the C.P.I. in full. Since that date the C. P.I. consistently supported Nehru's policy moves. The Party Chairman, Mr. S. A. Dange briefed by the External

On February 12, 1963, the National Council of the C.P.I. passed a resolution on Certain Ideological Questions Affecting the Unity of the International Communist Movement in which they charged the Communist Party of China and the Albanian Party

of Labour of violating the common understanding of the international Communist movement as contained in the Moscow Declaration of 1957 and the Moscow Statement of 1960 of the Communist and Worker's Parties. The new policy promptly had the effect of rehabilitating the C.P.I. somewhat. The past blunders of the Party have caused a very considerable damage to it and at the moment of writing its boat is still in deep waters with about 700 of its members in prison. If the C. P. I. had followed correct national policies and refused to sit on the fence on the Sino-Indian border question they would have certainly done much better in the Third General elections. Even as it is they retained 29 seats in the Parliament; in Andhra they gained 16 more seats (51); in Assam and Gujrat they failed to get a single seat; in Bihar they added 5 more to their 7 seats in 1957; in the Punjab they secured 9(3 more than in 1957); in Madras they won only 2 seats; in Madhya Pradesh only 1; in Maharashtra they obtained 6 seats and in Mysore 3; in U.P. they added 5 to their 9 seats in 1957; in West Bengal they gained 49 seats. The C.P.I. fought the Third General Elections on the basis of a revolutionary programme in tune with the official line of the C. P. S. U.The split between the Leftists and the Rightists in the C.P.I. has, of course, weakened the Party in terms of loss of cohesion and political following. It will be very difficult for the C.P.I. to make any spectacular gains in the 4th General elections.

THE HINDU MAHASABHA AND THE JAN SANGH

A third group of parties in India consists of communal elements and of these the Jan Sangh, the Hindu Mahasabha, the Ram Rajya Parishad are more important. The Hindu Mahasabha is the oldest (formed in 1905) and it sought to revive the Hindu Culture and establish Hindu domination. Against the Muslim League demand of Pakistan, it pitted the slogan of Akhand Bharat. Its alleged association with the murder of Gandhi spelled its doom and despite its revival in 1951, it failed to muster strength.[1]

The Rashtriya Swayamsewak Sangh (R. S. S.) again, was formed in the twenties of the present century as a fanatical militant, fascist Hindu organization, highly disciplined, rightly organized, and as a para-military hierarchical body of frustrated young males devoted to the spread of Hindu gospel, purity of the Hindu race, and establishment of the Hindu Raj in Akhand Bharat (India and Pakistan United)[2]. The R. S. S. lay very low in 1948-50 for their alleged complicity in the murder of Gandhi, but soon after, with the encouragement given by Sardar Patel, they regis-

1 It secured 4 seats (Lok Sabha) in the election of 1951 and only 2 in that of 1957.

2 M. G. Gupta : "*Parliamentary Democracy in India*" in A. B. Lal (Edited), *The Indian Parliament*, pp. 248-253.

tered a revival. They claim to be a cultural organization but they carry on their political activities through the Jan Sangh formed by the late Dr. Shyama Prasad Mukerji in 1951. Dr. Mukerji was a national leader of tremendous stature with a record of partriotic service, a great parliamentarian with courage, conviction and gifted talents. Had he lived longer, the Jan Sangh might have been cast to play a healthy role in India's public life. After his tragic death in June, 1953, the Jan Sangh became a tool in the hands of the R. S. S. It succeeded in securing 3 seats in the Lok Sabha in 1952, 4 seats in 1957 and 14 seats in 1962. The Jan Sangh, however, cannot be said to be a major political force and except for making an appeal to communal sentiments it has hardly any programme which may merit any large following. At the elections of 1962 in the State Legislatures they improved on their earlier position held in some states. In Bihar the Party got 3 seats, while it had none there in 1957; in Punjab it secured 8 seats; in Madhya Pradesh its position shot up from 10 in 1957 to 41 in 1962; In Rajasthan it improvd from 6 to 15; but in U.P. its strength rose from 17 to 49. In Andhra, Assam, Gujrat, Madras, Maharashtra, Mysore and in West Bengal it failed [illegible] election at Jaunpur held in [illegible] dhyaya was defeated by an [illegible] list leanings.

The programme is just a bundle of contradictory statements thoughtlessly assembled and raised to the level of a manifesto. The tragedy of this Party is its obsession with 'Bharatiya Culture' which it pretends to understand in its entirety. Its leadership finds no time for organized thinking on major economic, social and foreign policy issues. It stands for reaction and revivalism; it is the spokesman of the archaic and rigid ritualism. Its criticisms of the Congress are grotesque and irresponsible.

Finally, the Ram Rajya Parishad, the most orthodox group, failed to win a single seat in the Lok Sabha in the elections of 1957 and secured only 2 seats in the elections of 1962. All these communal parties have no interest in problems of economic development, have virtually no economic thinking, have little understanding of political processes, have no intelligent appreciation of foreign policy issues, and have no use for democracy. Militarism, violence, rabid nationalism, hostility towards Muslims, a blind admiration for the U. S..A. and West Germany, and equally uncritical abuse for the U. S. S. R. and China—this is their programme. The Hindu Mahasabha, on January 3, 1963, declared in a resolution that it stood for "Hindu Socialism", which it defined as "from each [illegible] according to mite an [illegible] thought, it said, believ[illegible] are to be controlled in [illegible] fore, the equality of op[illegible] be the guilding principle of economic activity in society. All this is obviously vague and high sounding.

PROVINCIAL COMMUNAL GROUPS

Finally, there are provincial communal groups almost indifferent to the constitutional framework and primarily concerned with communal or provincial ends. In this group attention may be invited to the Akali Dal led by Master Tara Singh, the Scheduled Caste Federation and the Jharkhand Party. The Akali Dal's preoccupation is the Punjabi Suba agitation and the party is hopelessly divided in leadership as well as in the ranks. Master Tara Singh's leadership is contested by Sardar Fateh Singh who went on hunger strike in January, 1961, which he gave up on the intervention of Nehru. In August 1961, Master Tara Singh committed the most serious political blunder in undertaking a fast unto death in the cause of the so-called Punjabi Suba. The Union Government as well as the Punjab Government accepted the challenge very firmly and as days went by Master Tara Singh lost popular sympathy. The fast continued along with a counter-fast by an unknown Sadhu till October 1, 1961. The Master had to yield and ultimately had to be satisfied with a Commission (appointed by the Union Government) to examine the grievances of the Sikhs. The Akali Dal thus lost the ground. The Punjab Chief Minister firmly controlled the situation and for some time the Akalis lay low. Tara Singh announced that he would soon retire from politics. In 1964-65, the Panjabi Suba agitation was again started. Kairon had been assassinated soon after Nehru's death. During the Indo-Pak conflict of Sep-Oct. 1965, the agitation was temporarily called off. But it was resumed in December 1965. In March, 1966 the union Government was forced to concede it . When the Suba is formed, the Akali Dal may well disintegrate and other parties are bound to emerge.

The Scheduled Caste Federation was founded by Dr. B. R. Ambedkar and after playing some role in the negotiations of 1945-47, leading to the transfer of power, it faded into obscurity in 1947-50. Dr. Ambedkar, however, resigned on the eve of the first general elections and the S. C. F. polled 2.5% votes for the Lok Sabha. In 1956, this man, along with his followers accepted Budhism. He died in 1957, leaving the S. C. F. disorganized and divided. The Jharkhand Party is the chief tribal Party led by Jaipal Singh, but the setting up of Nagaland in 1960-61 has deprived this group of its seats. This group announced its merger with the Congress in May 1963.

PARTY TRENDS IN INDIA

A few conclusions may now be drawn. In India, there is one Party—the Congress— which has held [illegible] parties, [illegible] ed sepa[illegible] to co-operate with the major party. There is a large number of parties, most of them just a series of connections where the cohesive

factor is not so much ideology or interest as allegiance to a leader. About 200 groups announced their intention to contest the first elections and 14 parties were recognized by the Election Commission as National Parties, and 50 as State Parties; of the former only 5 received more than 3 per cent of the vote—the minimum required to be recognized as a national party—the Congress, the Socialists, the K. M. P. P., the Jana Sangh, and the C. P. I. in the Second General elections, only 4 parties were recognized as national parties—the Congress, the C. P. I. the P. S. P., and the Jana Sangh and ten others—the Forward Block in West Bengal, the Hindu Mahasabha in 4 states, the R.P. in 6 states, the S.C.F. in 7 states, the R. S. P. in Kerala, the Revolutionary Communist Party in Manipur and the Krishkar Lok Party in Madras and Rajasthan, the Peasant and Workers' Party in Bombay, the Tamilnad Toilers Party in Madras, and the Akali Dal in the Punjab—were recognized as State Parties.

For the Third General Elections, the Election Commission decided to recognise the under mentioned sixteen parties for the purpose of allotting reserved symbols to their candidates at parliamentary and assembly elections in the States and Union Territories mentioned against each party :

1.	Congress	...	All States and Union Territories.
2.	Praja Socialist	...	All except Punjab, Rajasthan and Tripura.
3.	Communist	...	All except Madhya Pradesh, Mysore and Hmachal Pradesh.
4.	Jana Sangh	...	Madhya Pradesh, Maharashtra, Punjab, Rajasthan, Uttar Pradesh and Delhi.
5.	Socialist	...	Andhra Pradesh, Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh and Manipur.
6.	Swatantra	...	Andhra Pradesh, Bihar, Gujarat, Madras, Uttar Pradesh and Himachal Pradesh.
7.	Hindu Mahasabha	...	Madhya Pradesh, West Bengal and Delhi.
8.	Rama Rajya Parishad	...	Madhya Pradesh and Rajasthan.
9.	Republican	...	Maharashtra and Punjab.
10.	Jharkhand	...	Bihar.
11.	Muslim Lague	...	Kerala.
12.	Dravida Munnetra Kazhagam.	...	Madras.
13.	Peasants and Workers.	...	Maharashtra.
14.	Ganatantra Parishad	...	Orissa.
15.	Akali Dal	...	Punjab.
16.	Forward Bloc	...	West Bengal.

After the elections, the Election Commission, on September 24, 1962, announced that 14 political parties, recognized State-wise, are eligible for reserved symbols at all future elections. Claims for exclusive reservation of election symbols have been recognized on the basis of the results of the 1962 general election. Political parties which secured for its official candidates (who did not forfeit their deposits) a minimum of four per cent of the total valid votes cast either at the parliamentary elections or at the assembly elections in a State have been given the right to have a reserved symbol. On this basis, the Commission has found that the Congress is eligible for a reserved election symbol in all the 14 States; the Communist Party in 10 States; the Praja-Socialist Party in nine States; the Swatantra Party in seven States; the Jana Sangh in four States; and the Republican Party in two States. Eight parties, including the Socialist Party, the All-Party Hill Leaders' Conference, the Jharkhand party, the Muslim League, the Dravida Munnetra Kazhagam, the Peasants and Workers Party the Akali Dal and the Forward Block, have been recognized for the allotment of a reserved symbol only in one State. The Commission issued a revised notification in regard to the re- [illegible] parties, superseding its notifi- [illegible] e third general election. The [illegible] ment of symbols to candidates at all future elections, including bye-elections. While the Hill Leaders' Conference, a newly recognized party in Assam, has been assigned the "Flower" symbol, there is no change in the symbols assigned to the other 13 parties during the 1962 general election. The Hindu Mahasabha and the Ram Rajya Parishad, which failed to secure the minimum percentage of valid votes in any State during the last general election, cease to have any reserved symbol. A Press note issued by the Commission said : "On analysing the votes polled by party candidates at the last general election, it is found that the following parties are eligible for a reserved Symbol in the State or States shown against them :—

1.	Indian National Congress	All the States and Union Territories.
2.	Communist Party ...	Andhra Pradesh, Assam, Bihar, Kerala, Madras, Maharashtra, Orissa, Punjab, Rajasthan, West Bengal and Tripura.
3.	Praja Socialist Party	Assam, Bihar, Gujarat, Kerala, Madhya Pradesh, Maharashtra, Mysore, Orissa and Uttar Pradesh.
4.	Swatantra Party ...	Andhra Pradesh, Bihar, Gujarat, Madras, Mysore, Orissa, Rajasthan and Himachal Pradesh.
5.	Jana Sangh ...	Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh, and Delhi.
6.	Republican Party ...	Maharashtra, Punjab and Himachal Pradesh.

7.	Socialist Party ...	U. P. and Manipur.
8.	All Party Hill Leaders Conference. ...	Assam.
9.	Jharkhand Party ...	Bihar.
10.	Muslim League ..	Kerala.
11.	Dravida Munetra Kazhagam ...	Madras.
12.	Peasants and Workers Party ...	Maharashtra.
13.	Akali Dal ...	Punjab.
14.	Forward Block ...	West Bengal.

The lists of free symbols has been revised. These are now bicycle, boat, camel, horse, pot, railway engine, scales, spade, sparrow, and two leaves.

A regular feature of Party activities in India has been electoral alliances which have been unprincipled making party activity rather unpredictable. Again, the Independents have played an unusually important role and in Kerala, the Communist Ministry was installed in office with the support of 5 Independents. The Opposition Parties in India perform the important function of educating public opinion and sustaining political interest. They may not succeed in providing alternative choice of candidates to the voters but they do keep a check on the government and make for responsible government. Today, the dominance of the Congress Party is complete and this leaves no chance at all to the Opposition parties to provide an alternative government. Party programmes are not distinct and most of the parties are aligned under communal, regional or linguistic forces. Most of the parties profess socialism and the voter, even if he tries to understand issues, cannot make any intelligent decision. None of the opposition parties is broad-based, and this is one of the reasons of their failure to make full capital out of the Congress mistakes. The result is frustration, irresponsibility and drift, which are occasionally expressed through walk-outs, hunger-strikes, and hartals as alternative methods of redress. A new force which has its bearing on party activities in under-developed areas is foreign assistance. Foreign economic aid is considered essential for economic development and this is sometimes exploited by the ruling party in its own interest. The Opposition groups also feel impelled to lean on outside financial assistance. This creates a situation in which the policy of the party is not determined so much by groups of voters or by parliamentary representatives, or even by party bosses, as by those who provide capital for the party.

In India, a very striking feature of election is the number of invalid votes cast. In the elections of 1962, the number of invalid votes was alarming. Take, for instance, the case of the Bindki Assembly Constituency in U. P. Here 37,637 votes were cast but votes wasted ran as high as 3,016. But the pride of place for wasted votes may be claimed by M. P. In Dhimarkheda Assembly

Constituency (Reserved) votes cast were only 21,499 out of which 4,191 votes were found to be invalid. In keeping with its Assembly Constituency record, M.P. may as well claim the record for invalid votes in a Lok Sabha Constituency; In Bastar (Reserved) Lok Sabha Constituency votes polled were 2,18,814 and invalid votes numbered 31,158.

Invalid votes are no privilege or despair of U. P. or M. P. only. A tidy figure of wasted votes is the lot of almost each and every constituency. Nothing shocks an interested observer so much, not even the defeat of an ideal candidate of his choice—as the figure of invalid votes in the biggest democratic election in the world. Why should there be so many invalid votes? Admittedly our voters are mostly illiterate. It is quite possible that many voters including literate voters, but with not much schooling, may get nervous inside the polling booth and forget in their haste to correctly stamp the ballots. But all such attempts at explanation may not whitewash our failure to correct-recording the votes. For instance, why was there only one invalid vote in the Mandvi Assembly Constituency (Gujarat), or for that matter only 5 invalid votes in the Dehri Assembly Constituency (Bihar) while other constituencies in those States as in other States of India recorded so large a figure of invalid votes? Compare Mandvi's one invalid vote for 19471 votes polled against Dhimarkheda's record of 4,191 invalid votes out of 21,492 votes cast. If Dehri's 47,965 voters out of 47,970 votes polled knew how to correctly stamp ballot, why should the Amroha Assembly Constituency's 5,339 out of 47,267 who exercised their franchise, failed to correctly stamp. It cannot be that Amroha voters were less literate or had less sense than Kishanpur voters : both are U. P. constituencies. Neither can it be said that Mandvi's voters are more experienced than those of other constituencies of Gujarat. Some guidance inside the booth, a little direction here and there, might have helped a lot more for clear and clean recording of votes. A little policing would surely have prevented so large a casualty of ballots. No doubt presiding officers and their helps in a polling booth are hard put to offer any guidance, any direction whatsoever. In rural areas, it is also reported in the press that quite a number of voters were reported to have put their thumb impression on the ballot papers. Evidently illiterate voters used to putting thumb impressions were neither instructed outside nor told what to do inside the polling booth. It was incumbent upon the officials inside the booth to help voters correctly affix the stamp. For some reason or another they did nothing. Result : invalid votes.

Finally, we must emphasise that in a country like India it is essential that for parties provisions must be made in the Constitution itself. Parties everywhere are controlled by the law. If in a Constitution we can provide for freedom of speech and other democratic tenets such as adult suffrage, independent judiciary and ministerial responsibility, it is amazing that we should leave out political parties which are the grist of political mill.

are the main instruments for the operation of a constitution. They are properly called political dynamics. If the Constitution of a country is democratic and parties are not, either of the two is bound to go under and the chances are that undemocratic parties will easily scuttle the democratic constitution. The Constitution, therefore, must provide that the internal organization and rules of procedure of all parties will be democratic. If a party vis-a-vis its own members, functions on the basis of fascism, it must be declared unconstitutional and banned, Subject to this, all parties must, of course, be free.

STRUCTURE AND ORGANISATION OF POLITICAL PARTIES

Political parties, like most organizations are pyramidal, from the leader at the top to the followers at the bottom. Of course, the basic elements which form the component units of party organization take different forms in different countries. In some countries, the basic element is the caucus the measure of whose strength is not the number of its members but their quality. It includes notabilities chosen because of their influence, its activities are limited to election period and its weight is exercised through election agents. In some states, the Party Cell functions at the base. The Cell has an occupational basis, and unites all—party members who work at the same place. In totalitarian regimes, there is a militia—a sort of private army enrolled and organized on military lines ready to hold themselves at the disposal of the leaders. In democratic parties, party branches are the most basic element. The branch appeals to the masses and possessses an internal organization with clearly defined duties. It provides for an intermittent form of discipline among its members. These members are given political education and thereby an elite is formed proceeding directly from the masses. In all modern democratic states based on universal franchise, party growth has led to processes of centralization as well as decentralization. In [illegible] the bottom [illegible] which tend to eclipse national issues. [illegible] has the advantage of maintaining the atmosphere of discussion, of intellectual rivalry and of freedom, but is likely to lead to schism unless the Centre has the strength to guide and lead. In Soviet type of parties, the system prevalent is called Democratic Centralism to which we have earlier referred. In an oligarchic leadership the candidates are nominated by the inner circle while the members of the party working at the base have simply to ratify the nomination and appeal to the electorate for support. But in decentralized parties, candidates are chosen at the local level by committees influenced by local leaders. They are appointed by a congress or a conference composed of delegates elected by the members in the branch.

Nomination of Candidate—In American and British parties authority theoretically starts at the base, in accordance with the principle of popular sovereignty, but actually the movement initiates from the leader and the elite. In the U. S. A. for the nomination of candidates there have been four devices—the party caucus, the party convention, the direct primary and nominating petition. The Caucus, which has been abandoned, except in a few local instances, consisted of select party leaders who met in private and decided upon the candidates. But with the diffusion of democractic spirit, the undemocratic character of the Caucus became too obvious and it was replaced by nominating Convention after 1830. State-wide Conventions were now used for nominating state offices, and national Conventions replaced the congressional Caucuses for the selection of presidential and vice-presidential candidates. But these Conventions failed to solve the problem and the lack of interest which the people showed in the selection of delegates to these conventions permitted their domination by corrupt bosses. So these Conventions fell into disrepute and with some exceptions were replaced by the Direct Primary[1]—Open Primary and Closed Primary. Under this plan, the members of each party vote by secret ballot for those whom they desire as their candidates in the general election. These Primary elections are, therefore, held as a prelude to the general elections and the party nomination is determined by the results of these Primaries. The meetings of the Party Committees for selection of candidates for the Primaries become important. All Primaries are comprehensively regulated by law and are conducted under the supervision of the regular election authorities in much the same way that any general election is. The Primary is not subject to domination in the manner the Caucus and Convention were. Finally, there is the method of Nominating Petition which has to be signed by a certain number of qualified voters. This device is not permissible for those who run under the label of either the Republican or Democratic Party, since the laws of practically all the states provide that the major parties must nominate either by Convention or Direct Primary. Nomination by Petition is thus confirmed to independents or minor third parties. But it is used quite extensively in non-partisan local elections.

In Britain, Parliamentary nominees are designated by the local party organizations after consultation with the Central office of the party at London. The nominee, then, gets his name on the ballot without party designation in the same way as an independent, by filing the necessary nomination papers and depositing the required fees. In France, multi-member constituencies exist and a list of nominees containing as many names as there are seats

1 At present in Connecticut the nominating Convention is used for choosing candidates for public offices. It is used at the national level for selecting the nominees for president and vice-president. In six other states Convention is used in making nominations for U.S. Senator and certain other statewide offices.

assigned to the district is drawn up by the executive Committee of each party. In Latin American Countries, candidates are named by the party leader, with the rank and file having no say in the matter. In Canada, political parties hold delegate conventions in each of the districts to select their official nominees. In the U. S. S. R. the constitution provides that the right to nominate candidates is secured to public organizations and societies of the working people: Communist Party organizations, Trade Unions, Co-operatives, Youth Organizations and Cultural societies. In actual practice the C. P. S. U. selects a single name which appears on the ballot for each district. The voter has thus no choice and is presented with a ballot containing only the name of the candidate devoted to the Party line. In India, the nomination is made by the executive committees of different parties and the rank and file have no direct voice in the process. In the Congress, for example, the All India Congress Committee (AICC) consists of 1/8th of the delegates of each Prade [illegible] and is elected by the P. C. C. [illegible] the Congress Working Comm [illegible] sets up a Parliamentary Board [illegible] and 5 other members which scr[illegible] Parliament and State Legislatures. The C. W. C. also sets up a Central Election Committee consisting of members of the Parliamentary Board and 5 other members elected by the AICC for conducting election campaign and for making the final selection of candidates for the state and Central Legislatures. Finally, the Pradesh Election Committee is set up which consists of the President of the P. C. C. and not more than 10 and not less than 4 other members to be elected by the General Meeting of the P. C. C. by 2/3rd vote. The President of the P. C. C. presides over the Pradesh Election Committees. This Committee recommends candidates for Central and State Legislatures to the Central Election Committee. But the latter gives the former guidance in regard to the selection of candidates and other matters relating to the conduct of elections.[1]

PARTY PROGRAMMES

The next step in the party organization is the platform, the programme and the issues. In the U. S. A. the platform is drawn up as a resolution by a Committee of the National Convention and is presented to the Convention membership for adoption. It becomes "a series of statements" framed in a manner to satisfy conflicting economic and social interests. The party platforms actually become propaganda battle cries. A party programme, by contrast, is "a mixture of policy and methodology" in which specific acts are condemned or recommended and alternative courses of action are indicated. Issues are carefully manufactured many months in advance by research and Congressional

1 M. V. Ramana Rao : *Development of the Congress Constitution*, p. 223.

investigation. In Britain and in most European states, all political parties have annual meetings of party leaders to decide policy and plan programmes. The debates and discussions of these affairs are of great value both to the leaders and the rank and file in promoting understanding of the issues and evaluating the competence of the top leadership in the party. In the U. K., the programme is composed of a series of resolutions passed in the national confer[illegible] the parliamentary [illegible] heir annual sessions [illegible] ssues made out. In Switzerland, parties are not tightly organized and no party has any net work of cells in all the cantons and communes. There is no rigid programme, no rigid mandate, no intolerable bossing.

Election and Campaigning—The third stage of party organization is the choice of tactics, strategy and winning victory. The nature and scope of the campaign is determined in each country by the peculiar institutions, customs, laws and temperament of its people but the use of press, mail, pamphlets, political rallies, torchlight parades, sound trucks, wall-pastings, personal contacts, radio and television are rather commonly used in order to influence the voter's decision. For all this a party needs money, means of publicity and propaganda, a strong and efficient organization, an able and effective machinery from the lowest level up, industrious workers and intelligent and vigilant party regulars. In Britain, the constituencies are small and electioneering is comparatively simpler, and a house to house canvassing is possible. In the U. S. A. greater use is made of newspapers, radio and television. In Britain and India the B. B. C. and the All India Radio allocate time to national leaders to speak on behalf of the parties. But in the U. S. A. the election campaign is more prolonged than in Britain or continental countries. In India the duration of election was cut short in the 2nd elections and the elections of 1962 did not take more than 2 weeks. In many states including India and the U. S. A. laws limit the size and sources of contributions and the amount of expenditures, and require that campaign fund be officially reported. In France campaigning is more restricted than in Britain. In order to equalize the opportunity for all candidates, the allowable amount of display is apportioned without favour among the candidates, and the number of pieces of partisan literature is specified. The government pays a portion of the cost of printing and supplies, and renders franking privileges [illegible] the polls. [illegible] ndidate. [illegible], but the individualistic traits that mark French character are nowhere more apparent than in these campaigning activities. Candidates may issue their own statements on policy. These may or may not conform to the national platform depending on party practice. "*The spirited discussions on the local Coffee house Circuit*

last. . . . . for twenty days. Heckling and haranguing are also typical of French politics." In India distances are vast, means of communication slow, and people being illiterate, printed word has no mass appeal. Campaigning in rural areas is done through village meetings, slogan mongering, film music and jeeps and trucks are used to convey the processionists. The principles of campaign strategy are common—choosing the key issues, evading embarrassing ones; avoiding commitments; exploiting the errors of the adversaries, making promises which can reasonably be fulfilled, making capital of the [illegible] and the U. S. A., sometimes [illegible] exploited. The fact that Ke[illegible] issue in the U. S. Presidential [illegible] criminated against and some [illegible] "sought carefully. . . . to stir up anti-Semitic prejudice against the Labour party by exploiting the fact that its Chairman (H. J. Laski)—who holds office for one year only and has no special weight or authority—was by accident of seniority, a Jew." Laski [illegible]

political consciousness is yet to develop, party programmes cluster round personalities and the candidates rarely rise above hate themes.

Now, how do the citizens make, if at all, an objective evaluation of the facts ? He is confronted with a maze of conflicting data and varying interpretations and flooded with propaganda, from all [illegible] for, the [illegible] many fo[illegible] is the fu[illegible] of popul[illegible] sition to certain public measures.

Parties and Government control. One of the questions with which a student of comparative government is confronted is whether political parties are private and voluntary organizations which should be relatively free from government interference or they are to be treated as adjuncts of government and subject to complete supervision. Should the State have the right to ban a political party because of the programme it stands for, to limit the number of parties or prescribe the conditions of their existence, or to lay down the method of [illegible] To these questions no answer wh[illegible] accep-table, is possible. But it may [illegible] ate is the ultimate protector and promoter of the common good, it has the obligation to see that so vital an agency as a political party does not jeopardize general welfare. This, the State can do, if a

1 *American Democracy* p. 454.

government immediately after election ceases to function as a mere party government and operates in national interest, trying to enlist and obtain maximum cooperation of the minority parties. This pre-supposes an agreement among the parties on fundamentals so that they may afford "to bicker safely", and a situation where individuals and groups are no longer convinced that they possess the key to absolute truth, and the absence of a pressing external danger. In our view a degree of State control on political parties is not only absolutely necessary but also desirable. None, for example, would seriously suggest that parties should be free to nominate minors or criminals if not anarchists. In the 18th and 19th centuries parties could be regarded as private bodies. Just as economic theory assumed a free market of individuals, political theory regarded men as individual political animals. But just as with the rise of combinations, of employers and employed, towards the end of the 19th century the classical economic tradition withered, similarly and at the same time, the rise of political combinations in the form of national political parties led to the rejection of classical individualistic democratic theory which put political parties beyond state control. In the U. S. A., for example, parties in the 19th century were regarded as mere private associations similar to trade unions, and were, therefore, left free to organize as they liked, to select candidates for public offices in any way they pleased, and to spend any amount they thought necessary. But all this is now past history. Today in the U. S. A. constitutional and statutory provisions define among other things what constitutes a political party and what the requirements are to get its nominees on the ballot, direct now and when it must nominate its candidates, outline the necessary party machinery and the composition and powers of party committees, and prescribe from what sources parties may receive their funds and how much they may spend. A party, that is, has now become a quasi-official agency of the government. As a U. S. Federal Court recently stated in a case "the party may, indeed, have been a mere private aggregation of individuals in the early days of the Republic, but with the passage of years, political parties have become in effect state institutions, governmental agencies through which sovereign power is exercised by the people."[1]

In fact, every major government in the world has, by legislation' attempted to control political corruption. In Britain, however there is no legal recognition to party status except that the Leader of Opposition is paid a salary under law. But law does not prescribe party organizations and operations. There is a limit on the expenses a candidate for election may incur but this is directed at the individual candidate and not at the parties as such. In Canada also, parties are free to determine their own structure, procedures and mode of nomination. In India elections are controlled by the Election Commission[2] which accords

1 Rice V. S. Elmore, 165 Federal 2nd 387 (1947).

2 Part XV; *The Constitution of India.*

recognition to parties as National parties or State Parties. For the rest, the parties are free to have their own nomination and procedures and to determine their structure.

But, then, all that we said above does not mean that party operations can or should be entirely controlled by the State. That would nullify democracy and would be a royal road to dictatorship as contemporary history amply demonstrates. The State cannot arrogate to itself the right to prescribe how many parties would be permitted. No government, in a democratic set-up can be permitted to ban a political party unless it is regarded as a threat to the security of state, or a threat to the Democratic Constitution itself, or unless the State is facing an external invasion. And the ban must be lifted as soon as the threat has been averted. But if the members of a party indulge in violent activities, the government cannot only punish the individuals concerned but it will be perfectly justified in outlawing such parties. It is true that freedom of political organization is the fundamental distinction between a totalitarian regime and a democracy. But if there is a basic contradiction between the principles on the basis of which the State is organized and the principles on which parties are organized, either of them will, sooner or later go under. A democratic constitution can never be worked by anti-democratic parties. That is why we suggest that the constitution or the fundamental law itself must provide for the basis on which parties will be organized. If the constitution is democratic, this basis must also be democratic. Subject to this limitation the government should not try to dictate party programmes or the choice of a party's candidates. The legislature can and does prescribe the qualifications for candidates but these qualifications are general, applicable to all the parties alike, and are intended to eliminate the minors, proven criminals or those who are likely to misuse their position if elected. If a party follows methods which are unwholesome, unethical or corrupt, it will pay the penalty at the polls. But the State must under no circumstances condone or allow to go unpunished even individual acts of violence. In such cases exemplary punishments may be awarded so that a party by acts of gangsterism and terror may not even think of subverting democracy. We may, then conclude, that while the government has no power to curb the electorate or curtail their freedom of action, it cannot leave a party with unfettered discretion. Some constitutional restrictions are absolutely essential and these will differ from country to country. What may be regarded as perfectly reasonable and valid restrictions in one state, may be re-viewed as strictly improper and unreasonable in another. One cannot afford to be dogmatic about these questions. The important factor is to establish harmony between the general theory of the constitution and the spirit of instruments which have to operate the constitution. There can be no persecution of political opponents, no outlawing of democratic parties.

Party Funds—Political parties cannot function without size-

able funds for propaganda—maintenance of personnel, and canvassing. General elections have become a very costly affair both for the political parties as well as the tax-payers. The party funds are partly the proceeds of membership fees. This alone would be thoroughly inadequate to meet the huge expenses of a party. Most of the parties in modern states are financed by vested interests. The conservatives in England, or the Congress and Swatantra Party in India are largely financed by business and industry, the last being also helped by old Zamindars and former ruling princes. In the U. S. A. both parties are supported by Commerce and Industry, as well as professions. The leftist parties are financed by trade unions. In the U. S. S. R., a member of the Communist Party has to pay an initiation fee and monthly dues running up to 3% of his income (if it exceeds 500 rubles), and in addition he has to pay all sorts of charitable, memorial and patriotic enterprises. It is estimated that as much as 20% of the rather meagre resources of a member must be given to dues or to these various causes. In Britain, the sums needed are raised in the localities in which they are spent, by annual subscriptions, fetes and garden parties. Until 1948, the Conservative Party was largely financed by a very small number of big contributors. But in 1949, a quota system was adopted under which constituencies successfully electing a candidate have to pay from 3d to 6d per conservative vote and constituencies failing to win a seat have to contribute from ½d to 2d. The Labour Party gets 9d per member per year from trade unions, socialist societies, cooperatives and local labour parties. In France, no party has been able to dominate the government and therefore, none receives large amounts from vested interests. The leftist groups do attempt to raise substantial moneys for campaigning but most of the other parties get along on modest budgets. Memberships are small. Some income is possible from the sale of literature but printing costs eat up the proceeds of sale. Associations of farmers, businessmen or other interest groups may donate large sums to a party for the promotion of some cause, in which they may be interested. In any case, in France, candidates pay the expenses of campaigning and parties in France have not to share that burden which they have to carry in the U. S. A. In the U. S. A., according to one authority, in the 1952 elections, over 55% of party funds came from big gifts mostly from prominent families. The deficits, nonetheless, are there and they are met by using "specialized techniques." Party banquets held on the birthdays of Jackson or Lincoln at $10 to $100 a plate, produce substantial sums. Prominent Party members feel under obligation to attend. The Republicans made a net profit in excess of $100,000 at the inaugural festivities for President Eisenhower in 1953. Bronze medals bearing the likeness of the President sold for $3 and silver ones for $24. A profit was realized on the glossy, colourful souvenir programmes, as well as on the tickets sold at a double-header inaugural ball."[1] Similarly, in

1 Rodee, Anderson and Christol, *op. cit.* p. 414.

India parties raise funds by organizing events while in Britain titles have sometimes been bestowed upon generous donors in a practice called the sale of honours. In India business magnets seem to have given their hearts to one party, minds to another, and have liberally contributed simultaneously to the war chests of many parties including the Congress. The idea seems to be to play safe. The support is given on an opportunistic basis. The motives in all cases are party loyalty, a sense of pride or duty, economic benefit, political power of office.

Party constitution : The U. S. S. R.—In one-party states, party is, as we noted earlier, identified with the state so that different organs of the party have to toe a line carved out by the top leaders after discussion. Organization is comparatively simple and dissidents can be liquidated in occasional purges. The Soviet State for example, is a tool of the Communist party which guides and controls every level of administration and legislation. Since the greatest field of government operation lies in the regulation of the national economy important party units have been set up to see the work of the factories and the collective farms. Each party subdivision has its own headquarters, council, offices, treasury, newspaper. The organization is absolutely tight and there is nothing which is outside the jurisdiction of the C. P. S. U. According to the rules adopted by the 19th Congress of the Party on October 13, 1952, the C. P. S. U. is a voluntary militant union of like-minded communists consisting of people from the working class, the working peasants and working intelligentsia, whose principal objects are to build a Communist society by means of gradual transition from socialism to communism to raise the material and cultural level of the people, to organize the defence of the country and to strengthen ties with the workers of other counties. The Party is constituted on a territorial-vocational principle. The supreme organ is the All Union Congress. Ordinary Congresses are convened not less than once in 4 years. These congresses are made up of more than 1000 delegates and alternates representing the party organizations of the constituent republics, the autonomous republics, and the other regional areas. In 1956 this number was 1355. The All-Union Congress elects a central Committee (C.C.) which meets at least every 6 months, carries on the work of the Party between Congresses and guides the work of Central Soviet and public organizations through Party groups within them. It consists of 133 members and 122 candidates or alternates formally chosen by the All-Union Congress, but actually selected by the leaders of the Party. The C. C. has an elaborate permanent organization headed by a President, a Secretary-General and several assistant secretaries.

The C. C. forms a Presidium which till 1952 was called the Politbureau. The Presidium directs the work of the C.C. between plenary meetings. In 1952 it consisted of 25 full members and 11 alternates but immediately after Stalin's death it was cut down to

10 members and 4 alternates the size of the old Politbureau. But the purge in 1957 which drove out Malenkov, Molotov and others caused a shift from 11 full members, and 6 alternates to 15 full members and 9 candidates. The Presidium meets every few days.

The Central Party *headquarters are controlled by a Secretariat* formed by the C.C. It was this body which Stalin effectively controlled for about 30 years, as the Secretary-General. In 1952, a College of 10 Secretaries replaced a single Secretary-General and one of these 10 was to be the first Secretary. After Stalin's death this was reduced to 5 but since 1957 there are 7 Secretaries. The first Secretary, however, is the most important official even today. The Central party headquarters have 2 sub-divisions, (a) that which is convened with purely party matters, and (b) that which controls the government. The former looks after the operations of the C. P. S. U., indoctrination, publicity and propaganda. The latter maintains full-fledged departments of agriculture, industry, finance, transportation, education and so on. This part of the party organization closely resembles the structure of a government. These departments of the party lay down the policies which government departments loyally implement. These party departments, *of course, act in coordination with the Party Presidium* and the C. C.

Then, there is the Party Control Committee formed by the C. C., working under its direction and responsible for supervising the observance of Party discipline. Immediately below the central party organization, there is a complex system of regional and district machinery. In a modified form similar rules hold for the Regional Territorial and Republican Party organizations. Finally, primary Party organizations exist in mills, factories, State machine and tractor stations and other economic establishments where there are at least 3 Party members. These primary organizations elect delegates for the Councils of towns and rural districts and they in their turn the party Councils of the Regions. These last send delegates to the Councils of the Union Republics and from the latter go the delegates in the All-Union Congress. Thus, power runs from top to the bottom while responsibility tends to *move from the bottom to the top. This is the application of* Democratic Centralism to the party organisation in Russia. In 1960, the C. P. S. U. was reported to have 8,708,000 members. Its main instruments are the youth organization, schools and universities, the political police, the Red Army, the press and radio, labour unions and cultural groups.

China.—The Communist Party of China (C.P.C.) is organised on the pattern of the C. P. S. U. and is the strongest and the biggest party in the world. Its control rests on four main foundations, Marxist-Leninist ideology, organisation, propaganda, and terror. Like the C. P. S. U., the C. P. C. is organised on the basis of Democratic Centralism. There is the usual hierarchy of party cells and district, hsien, provincial, regional, and central organisation

which correspond respectively with administrative counterparts in the government. The supreme party organ is the National Party Congress but the key organ through which the C. P. C. exercises power is the Central Committee (C. C.). Before 1956 the C. C. consisted of 42 members and 30 reserve members. In 1956 the 8th C.C. consisted of 97 regular and 73 alternates. But in 1961 the strength of the C. C. was 95 full members and 82 alternates. From 1945 to 1956 the C. P. C. operated under the Constitution adopted at the 7th Congress. The 8th National Congress adopted a new constitution of the C. P. C. which laid stress on collective leadership and declared that Marxism-Leninism is not a dogma but a guide to action. The members of the C.C. are all ranked in descending order according to the number of votes received at the Congress.

Under the C. C. are the Central Political Bureau and the various central departments in charge of organisation, publicity, training, and youth, farmer's and worker's movements. The Politburo now consists of 16 full and 6 alternate members. The first 7 members of the Politburo constitute its standing committee and they are Mao Tse-tung (Chairman of the C. C.) Liu Shao-Chi (Chairman of the Peoples' Republic), Chou En-Lai (Premier), Chu Teh (Chairman of the Standing Committee), Chen Yun (First Deputy Premier), Marshal Lin Pio (Deputy Premier, Defence Minister, and Deputy Chairman of the C.C.), and Teng Hsiao-ping (Deputy Premier and General Secretary of the Party). The C. C. has a Secretariat consisting of 6 regular and 3 alternates, a control commission which maintains party discipline, consisting of 17 regular and 4 alternates and having a Secretariat of one Secretary and 5 deputies. The various departments functioning under the C. C. are the Organisation Department, Propaganda Department, United Front Work Department, Social Affairs Department, Rural Work Department, the General Administrative Office and the Central Commission referred to above. Each department supervises the corresponding body at lower levels in the party hierarchy.

Below the National Party Congress, there is the Regional Party Congress, the Provincial Party Congress, the Hsien Party Congress, the District Party Committee and the Party Cell (Hsiao-Tsu). Every member of the C. P. C. must belong to one of these cells, each cell having about 20 members working in the same factory, farm and so on. The C. P. C. has expanded from about 5 millions in 1956 to about 15 millions in 1961. Of these about 12% are women and about 75% from the rural areas. Strict control is exercised in order to ensure unity and discipline and stress is laid on traits like self-sacrifice and spartan living bolstered up by all the dogma and emotional overtones of militant ideology. The rigid discipline is backed up by frequent indoctrination, brain-washing and purge. There is an elaborate programme of physical labour, coupled with criticism and self-criticism. For at least a month each year, and in many cases longer, party

members and officials of State must work in fields and factories and by labour and association with the masses, imbibe the mass point of view.

The C. P. C. not only controls the government but also the armed forces, the courts, and the police. It drafts the directives guiding overtly political courts where crime and penalty vary with the class of the offender and the political climate, profession of innocence increases the penalty, and trials are frequently open propaganda sessions. Attached to the C. P. C. are the Youth Organisations, the Communist Youth League and the Young Pioneers. The former comprises of 25 million persons of 15-25 years; the latter has about 10 million of 9-14 age group. In addition, there are the probationers or activists who constitute 'transmission belts between the party and the public." They serve the party on a part-time basis in military units, factories, shops, and cooperatives. There are several party-directed people's organisation and groups. These include "street Committees" which report each household's activities to the police and assign voluntary jobs like pavement-washing. Associations, such as the Union of Chinese Writers, the Federation of Trade Unions, the All China Federation of Democratic Women supplement party policies and discipline members. They are so minutely organised that within a few hours Shanghai can call party members together in a mammoth demonstration, complete with banners, slogans, cartoons, and mass slogan-shouting on any subject.

Is there any schism within the C. P. C ? There is nothing to prove any real or basic conflict among the leaders of C. P. C. The so-called duel between Liu Shao-chi and Chou En-lai is more a wishful thinking than any real schism. The fear of the U. S. A. and the danger from India are played up to keep everybody on the toes. Indeed, by comparison with most communist parties, the C. P. C. has experienced very few factional struggles which could threaten its cohesion. During the past few years, the only serious challenge to party unity at the top was the alleged attempt during 1954-1955 of two Politburo members, Kao Kang, and Jao shu-shih to achieve positions second only to that of Mao himself. But they failed and were purged. Nor is there much evidence to support the theory that there are cliques within the leadership—the nationalist clique and the internationalist clique. There may be differences of opinion on ideological issues or relations with Moscow. But these differences have not been brought out in the open and no top-ranking leader has yet been purged. Finally, there is absolutely no prospect of the communist regime toppling over. The government effectively rules the country. Since "poisonous weeds" blossomed in 1957, Peiping has emphasised another version of this "flowering" called "big blooming, big contending, big debate and writing large-character posters". In groups questions such as—why is it a good thing to form a commune ?—are discussed. After voicing a few carefully worded ‹' ıbts, one expresses complete agreement first by speech

and then by writing posted up on walls. All this along with epidemics of "volunteering" produces conformity.

There are a number of minor political parties still permitted in China but all of them are "merely small political associations of organised fellow travellers." These parties[1] are styled as "democratic" but they have no independent power and no distinct programme different from that of the C. P. C. Since the anti-rightist Campaign of 1957 their importance has been made more apparent. "The Chinese communists have found these to be useful appendages and they had intended to utilise them for a period of time, as devices for manipulating and controlling important groups such as non-communist intellectuals, businessmen, and Government servants. They were also used as an asset in foreign policy for the facade of a "Coalition Government" could convince us in India that Peoples' China was more democratic than other dictatorships. All this has now been exposed.

Britain and the U. S. A.—In a parliamentary democracy elections may constitutionally occur at any time. Party organisations must, therefore, be continuously maintained keeping up

[illegible]

publishing houses whose proprietors or directors hold prominent positions in the party councils or in Parliament. The Press plays a very important part and the Conservatives are at an advantage inasmuch as "the four major Chains" favour them editorially and in the selection of news. Other parties have their papers too but the Daily Express and the Daily Mail (Conservative) overshadow the Daily Herald (Labour) and the News Chronicle or the Manchester Guardian (both Liberal). Secondly, British parties make use of the party school (summer schools) offering one or two week courses from June to September and held at University towns or holiday resorts. The Conservatives have a regular college—the Bonar Law College which conducts a year-round curriculum. Each party maintains a permanent staff which imparts specialised instruction in party organisation and elections. All parties have their clerical, research and publicity staff, together with the parliamentary agents who are organisers and election managers doing party work in the constituencies. In Britain there is no spoils system and the civil service is non-political. Party leaders are, therefore, unable to place their workers in soft public jobs, as they do in the U. S. A., in order to compensate for efforts on

1 There are 8 such parties : the Revolutionary Committee of the Kuomintang (defectors), the China Democratic League (Sympathisers) the Democratic National Construction Association (business), the Chinese Peasants and Workers Democratic Party, the China Association for Promoting Democracy, the China Kung Tang (Overseas Chinese) the Miu San Society (Intellectuals) and the Taiwan Democratic Self-government League.

behalf of the party. The party staff is, therefore, full-time, paid from party funds and entirely divorced from the public payroll.

The membership of the Conservative Party is about 3 millions now and it is organised in Constituency Associations. The Young Conservative movement runs parallel to the party organization and is represented on its principal committees at all levels. The Constituency Associations have branches based on wards and polling districts and each Association has a Secretary, a Chairman, a Vice-Chairman, and a Treasurer who are elected by the Annual General Meeting of the Association. All the Constituency Associations form the National Union of Conservatives and Unionist Associations whose governing body is the Central Council. The Annual conference of the Party is organized by the National [illegible]

and works with the help of several Advisory Committees. The Leader of the Party is elected by the Members of the Houses, all prospective candidates and the Executive Committee of the National Union. The Leader is always recognized as the Prime Minister or the Leader of Opposition. The Leader controls the party Headquarters and the Central office.

Theoretically, the Constituency Associations are completely autonomous, having their own rules and selecting their own candidates, while the Central Office under the direction of the Leader is merely an independent staff of research, propaganda, and organization personnel. But, in practice, the Central Office dominates, advising, sharing personnel, assisting with central funds and taxing the richer associations to aid the poorer ones. The Associations may choose their own parliamentary candidates, the Central Office requires that prospective nominees receive its endorsement before obtaining constituency approval. Recalcitrant local organizations can always be dealt with by establishment of a rival constituency organization having the endorsement of the Central Office.

The Conservative party's representatives in Parliament constitute the "parliamentary party" where there is greater discipline than in the U. S. A. Any M. P. who refuses to obey the whip of the Leader is in great danger of losing his seat and status. The Parliamentary Party is managed by the Chief Whip and meets weekly as the "1922 Committee", the Chairman being a backbencher. If the Party is in opposition, its meetings are attended by members of the front bench, but when the Party is in office, these members attend by invitation only.

The Labour Party was founded in 1900 by the Trade Unions and federation of various organizations. Its strength today is about 8 millions and even now it is a federation of the socialist societies, trade unions, cooperative societies, and the regional and

local Labour Party organizations. Thus structurally it is built on federal lines. According to one authority, "the Trade Unions which have about four fifths of the Party's total financial and the membership strength have always been uneasy in this alliance with the more leftist and more politically active constituency and socialist organizations. Although the Unions are affiliated with the party individually, they must be members of or recognized by the Trade Union Congress which is in turn a coordinating superlabour organization. . . . Thus far the Trade Unions have succeeded in moderating doctrinaire socialist demands, but the Bevan revolt in 1951 underlined the tension which exists and the possibility of a split which could be more damaging to the Labour movement than the earlier schism of 1931. Incidentally, the Labour party's structure is so extremely complex that it has required the elaboration of one of Britain's few formal, written constitutions."[1] The Party has 2 classes of members—affiliated and individual.

The chief policy-framing organ of the Labour Party is the Annual Conference where leadership is centralized and to which all Affiliated Members send one representative, Members of Parliament and Party candidates being ex-officio members. It is a point of pride with the Labour party that decisions of policy and programme emanate from the party conference where rank and file members participate. Debates at the Conference are of a highlevel. Every year the Annual Conference elects a National Executive Committee of 25 members and a Treasurer in such proportion and under such conditions as may be set out in the Standing orders for the time being in force. The leader of the Parliamentary Labour Party is an ex-officio member. It has wide duties,[2] and is responsible, between conferences, for deciding policy, enforcing the rules and proposing such amendments to the constitution and standing orders as it deems proper. It controls the central organization, decides disputes between members or associations, and organizes the funds and finance. It also cooperates with the constituency parties in selecting candidates for Parliament. But membership in the party and permission to run Labour candidate in any election is contingent on acceptance of the rules, programme, and principles of the national party. Members of the National Executive Committee like members of the Cabinet, must resign if they cannot accept the policy agreed.

The Labour members of the Parliament constitute the Parliamentary Labour Party and it works with a Chairman, Deputy-Chairman, Chief Whip and a Committee being elected by the members. Members of Parliament accept the decisions of the Party meeting and must support it although they may abstain on grounds of conscientious objections. Eventually, the ordinary

1 Herman Beukema and Associates : *Contemporary Foreign Government*, p. 39.
2 Clause VII : Party Constitution and Standing orders, approved by the Annual Conference in Margate 1947 (London : The Labour Party, 1947).

M. P. owes his loyalty to the Conference and its programme. Despite the diversities within the party leadership, there is a great cementing force in the trade-union movement. The Laski episode of 1945 underlines this aspect of the relationship between the National Executive and the Parliamentary Party.[1] According to one observer, "the Parliamentary Party is more important and effective when the Party is in opposition than when in office for in the latter event the leaders cannot serve as officials, but as members of the Cabinet are responsible to the whole House of Commons. In order to meet the dissatisfaction felt by backbenchers at their lack of influence on the policy of Labour Government, several groups were formed both on territorial lines and according to subject-matter and a Liaison Committee set up at which the officers of the Parliamentary Party could meet members of the Government to express the views of the Party. The individual chosen as leader of the Party when in opposition is of great significance for he will almost certainly become Prime Minister when the Party attains office."[2]

Now, although the Labour party is generally more severe with Waverers than is the Conservative party, both demand far more conformity than is observed in American practice. Hypothetically, a Democratic Congressman in the U. S. A. can defy the Democratic National Committee, the President, and the Democratic majority leader, and can yet be re-elected. Again, in the U. S. A. parties are not as centralized as in Britain. Ever since the days of Jackson, American parties have been organizations manned by professionals and working for most of the time for strictly limited professional ends. The parties are organized nationally, statewise and locally. The National organization consists of a National Committee (N. C.), the Senatorial Campaign Committees (S. C. C.) and the Congressional Campaign Committees (C.C.C.). The N. C. consists of one man and woman from each state and has a Chairman, an executive Secretary and a treasurer. The state representatives are nominated by the State delegations to the National Convention and the nominations are formally ratified by the convention. The N. C. conducts the Presidential Campaign, raises funds for the party, supervises general affairs of the party, and keeps up propaganda and fanfare of publicity. The W. Cs of both parties are dominated by commercial and industrial interests. The Senatorial Campaign Committee (S. C. C.) of the Republicans consists of 7 senators named by the Chairman of the Republican Conference in the Senate, while the S. C. C. of the Democrats has 6 members chosen in the same manner. These S. C. Cs "give all their attention to the Campaigns, raising and distributing funds for that purpose." The C. C. C. has to aid the Campaigns of party nominees for the House of Representatives. The C. C. C. of the Republicans has one mem-

1 Refer to Kingsley Martin : *Harold Laski*, Chapter VIII.

2 M. R. Curtis : *Central Government*, p. 27.

ber from each state having Republican representation in the Congress. The Democrats do likewise but they also have a woman member from each state. In both parties, nominations to these C.C.Cs. are made by state party delegations in the House and are ratified by the party Caucus.

Each party is also organized statewise in order to capture state and local offices as well as participate in national contests. In every state both parties have "a State Central Committee varying in size from 11 members in Iowa to 811 in California and chosen usually by State conventions or party primaries, which serve as agencies to link the numerous local organizations with the national system." These Committees prescribe qualifications for party membership and conduct state campaigns. Each party has a county Committee in every county in the Country. Its size and mode of composition varies from place to place but its main function is to manage local party affairs. "Such Committees are often the nuclei of powerful "machines" *e.g.* the Tammany Hall organization whose control is centred in the executive members of the New York Country Democratic Committee. In important urban centres, each party has a city Committee to run the city affairs. The base of the party is the Precinct or Election District. Though the precinct Committee is often spoken of, in practice, a single Committee man or Captain works as the routine agent of the party organization in its contacts with the voters and is quite frequently no more than an employee of the country or city Committee. It must be stated that actual power does not reside in these Committees but it rests with the office-holders, industrialists, labour leaders, publicists, lawyers and bosses who make up what is called as "informal organization." Party activity is continuous only at the State level, for, some one is always having to vote about something. But U. S. A. being a Presidential type of government, elections cannot constitutionally occur at any time as they can in parliamentary democracies. Thus, "at the federal level there is virtually nothing in between the 4 yearly political orgies that begin with preliminary battling for position, continue with the primaries, reach a climax in the summer at the conventions with their choice of candidates and drawing up of platforms, and then somehow continue after the let up of the holidays to build up to a second climax with the election in November. Once a President is elected he is both the leader of the party and normally the custodian of its machine, but this continues to exist only in the most tenuous fashion. Even more tenuous a life is sustained by the defeated party machine."[1] In the U. S. A. there is nothing like the "shadow Cabinet." During the intervals between the elections party professionals restrict themselves for the next run, "to building up their depleted warchests and to keeping up their communications with the leaders in the States."

Party organization in India.—We have earlier referred to the

[1] Max Beloff : *The American Federal Government*, p. 193.

Congress party and partially to its organization. The AICC is the topmost organ of the Congress and meets at irregular intervals on the call of the Working Committee(W.C.)which is presided over by the Congress President who nominates 20 members to the Working Committee. Every year the Congress meets in its Annual *Session so that the 66th Session—met at Bhavnagar in January,* 1961. It is in these sessions that the basic policy of the party is laid down and then it is interpreted and implemented by the A. I. C. C. The W. C., as the executive of the Congress, carries out this policy. All members of the Pradesh Congress Committees are delegates to the Indian National Congress and all the delegates take part in the Annual Session. Pradesh Congress Committees are constituted by the W. C. Any person of not less than the age of 18 accepting the Congress objective can become a Primary Member provided he pays Rs. 0.25 per annum and is not a member of any other political party. After 2 years, a Primary member can become an Active member on payment of Rs. 11 as annual subscription. A Primary member can vote only, but an Active member can be a candidate for elction to any Congress Committee. The lowest cell of the party is the Mandal Congress Committee over which there is the District Congress Committee, the members of which are elected by the former The Mandal Committees also elect members of the Pradesh Congress Committees at the rate of one for a lakh of population. Every member of the P. C. C. pays an annual fee of Rs. 15 and is a delegate to the Indian National Congress. The P. C. C. members elect 1/8th of their number from amongst themselves by proportional representation to the A. I.C.C. which also includes the President of the Congress, all ex-Presidents, all Presidents of the P. C. Cs, Leader of the Congress Party in Parliament, Leaders of the Congress Parties in the State legislatures and Territorial Councils in the Union Territories and members coopted by the W. C. Members of the Executive Committee of the Congress Party in Parliament are Associate Members of the A. I. C.C. The AICC meets as the Subjects Committee under the Chairmanship of the President at least 2 days before the Congress Session. Apart from Annual sessions a special session of the Congress can be called at the instance of the AICC or of the majority of the PCCs. The Congress President is elected by all the delegates of the Congress by Preferential Voting System. Subject to the control of the President, the General Secretaries are in charge of the office of the AICC. The Congress Constitution can be amended only by a session of the Congress.

The most important problem of party organization in India is the relationship between the organizational wing and the legislature party. On the British pattern, in India all the Congress members in the Indian Parliament constitute the Congress Parliamentary Party and on the same basis there are State Legislature Congress parties. Generally, the Congress governments follow the policies and broad programmes laid down at the Annual Sessions of the Congress. But since the government has to function

within the framework of the Constitution of India, the Congress policies can be implemented only within the limits set by the country's Constitution. At one time when the Congress was working as a National movement, there was no chance of a friction, but when it seized power in 1947, the question of whether the C. W.C., and the AICC at the centre, and the P.C. Cs in the States could dictate not only policies but also how best those policies could be implemented assumed impc
levels, therefore, the Prades
are pitted against the State
and the Congress President a
gress Committee correspond to the Prime Minister and the State Chief Ministers. Frictions between these two sides were there from the very beginning. At the Centre both Acharya Kripalani and Mr. Purushottam Das Tandon who were Congress Presidents and who felt that the organizational wing should have a greater say in the administration, were forced out of office. In these cases the personality of the Prime Minister overshadowed the Congress Presidents and the conflict could be resolved by the Prime Minister. Had Sardar Patel been the Congress President instead of Tandon, it is anybody's guess if he would have yielded without a tough fight. Normally, the Congress leaders should have given a serious thought to this question but they ignored this issue. It

C. B. Gupta should have normally succeeded him. He had a larger following and was the master of funds. At that time, however, Dr. Sampurnanand was imposed by the Congress High Command and Mr. Gupta was assured that in 1957 (Second General Elections) Dr. Sampurnanand would retire and that the former would be his "natural successor." Office, however, continued to lure Dr. Sampurnanand and his newly won friends. Mr. C. B. Gupta lost the election and there is evidence to show that Sampurnanand and his friends had a hand in organizing his defeat. Mr. Gupta, however, could contest a bye-election which he did but he lost again. F
Congress President in
purnanand. After a
he was almost forced to resign and at the intervention of Nehru, Mr. Gupta (twice defeated at the polls) who led the P. C. C., be-
in this case, against a back-
al ambition the conflict was
but it was the latter that was forced to resign. In 1949-50 at the centre, it was the organization that had lost, this time it was the administration that lost.

What is the correct position in a conflict of this nature according to the theory of democratic government? Should the government take its instructions from a body of people outside the legislature? Now, it is true that in a parliamentary democracy,

government is a party government, is wedded to the party programme and depends, for its existence, on party support. Any serious split in the party may lead to the fall of the government. But it is also true that a government in a democracy is not there to serve the party interest and in case of a clash between the party interest and the national interest, the former would be superseded and the latter upheld. Secondly, every government is supposed to operate within the framework of the Constitution of the country and no government would and should heed the advice of any party authority if it tends to run counter to the Constitution. Thirdly, the members of the legislatures are chosen by a very wide electorate consisting of people of all shades of opinion. These members, it is true, are all party members; but they are more than that; they are representatives of the people. In every country and more so in India, a large number of people do not hesitate to cross party lines to vote for candidates of the other party. There is no direct relationship between the party membership and the vote at the party polls. The members of the Legislature, therefore, have a conscience apart from the party conscience; they have a responsibility higher and broader than responsibility to the party. They are responsible to the legislature. The Government, therefore, has to function in national interest and is responsible to the legislature and through it to the people. On the contrary, the organizational committees of a party are chosen by limited electorates.

In some cases a member of the P.C.C., has behind him no more than 300 electors. Despite care to ensure fair elections, "complaints of bogus membership are heard all over the country and any one who has a working knowledge of the organization knows that unfortunately such stories are not wholly baseless, and in any case, the electors all belong to one party". These Congress Committees have no administrative responsibilities and if they have immense prestige today, it is a legacy of the pre-independence days. Fourthly, in any clash between the organizational wing and the parliamentary party, the latter would aways be at a disadvang [illegible] would have to restrain their [illegible])ers of the Congress (and in mo[illegible] are in the legislature and in the Government) they cannot say or do anything which might impair the Congress prestige and they can ill afford "to fight back with the unscrupulous persons aspiring to rise to positions of high office in the organizational wing." The organization can promise a seat or even a ministry to some one whom the legislature party cannot swallow. Moreover while the life of the legislature is for 5 years, the term of the Congress Committees is only 2 years. If the Government is tied down to the chariot wheel of the organization outside the legislature its work will suffer and ultimately the party itself may be discredited in the public eye. Bitter criticisms of the government by the organization would damage and embarrass the government as nothing would do. Constitutionally, it may not be affected by such

ticisms as long as it retains the confidence of the parliamentary party but morally its basis is completely shattered. For all these reasons, the organization has no right to interfere with the working of the government except in cases where the government departs from the policies of the party. Even in such cases there need not be any tug of war or a war of nerves. The best course for the organizational wing is, after full discussion, to issue a whip to the parliamentary party indicating the directions in which the government must change its policies. You cannot abolish the organizational wing altogether. It has a very useful function to perform. It is a forum of discussion, it works as a dynamic force within the party, it evolves a certain programme for it; it collects funds; it does valuable field work; it propagates party manifesto. We fail to see how it smothers democracy as Dr. Sampurnanand argues.[1] If its discussions and debates are not effective it is due to the failure of the government along with the weakness of the organization. The abolition of the organization will be a royal road to anarchy in which the government will function on the basis of caste, religion, or region.

The organization of the C. P. I. follows the general pattern of Communist Parties. The basic unit is the town or local con-

chooses the Politburo, and the General Secretary. The organization of other parties in India is broadly based on the Congress pattern.

Party Organization in France—In France, political parties are weak organizationally. In the legislature they are not called parties but groups, and outside the legislature, the members of the party are called militants. There are great strains between the French militants and the parliamentary groups *i.e.* the Deputies, and as Dr. Finer has put it, in some of the parties, especially of the Centre and the Right, the group means more than the party, for the grass-roots militants are not a well-organized and geared-in mass.[2] The French parties also lack in inner cohesion and except in the case of the Communists, no party can rely on the vote of its deputies. A certain degree of fissiparousness has therefore, become inevitable which to an extent, can be compared with the fissiparousness of the American parties. But their policies are formulated in annual party Congresses where the militants dominate the deputies. The Communist Party of France is organised on the basis of occupational cells, each cell having 3 to 30 members. Each cell has an executive committee. Above the cell there is the "Section" which consists of delegates of the cell executive committees. The Sections send delegates to the federa-

1 *Link January* 15, 1961, p. 14.

2 *Governments of Greater European Powers*, p. 339.

tions of Departments. The party's supreme organ is the National Congress consisting of representatives from departmental federations, and meeting at irregular intervals. The Party has a Politburo of 14; a secretariat of 4, and a control committee of 6. The principle of composition is Democratic Centralism. The Communist Deputies are obliged to resign at the call of the party. The Socialist Party is organised democratically "rising from its local sections in wards, cantons, and communes, as primary party organisations, to form federations in the departments." The federations make up the National Party Congress and between these annual congresses, the party work is carried on by the National Council and the Executive Committees. The N. C. consists of one delegate from each federation while the E.C. consists of 31 members elected by the federation. Through these elections the militants can exert pressure on the deputies. The M. R. P. (The Movement Republican Populaire) is similarly organised with sections, federations and the national centre. But its Central control is more tight and it has specialised teams. The Radical Party moves up by free elections from the local committee to the next tier, the Can-

e department, to the capi-

a large say in the selection

The party's National Congress, formed by federation's delegates is the supreme body. Between the Congresses, policies are formulated by the National Council and implemented by the Executive Committee. The French Conservative parties and Independent Republicans, the Action Republican, and the Payasans—are of divided interests. These conservative along with other parties with substantial agricultural interests, combine in an intra-parliamentary study group for assisting he agrarian interests. The R. P. F. consists of the de Gaullists who began as a Gaullist Union in June 1946 and became active after 1956. The members of this party are called "Compagons" (like comrades among the Communists) and the annual congresses are called as *assises nationales*. The party has factory cells where the entire time table is regulated by the centre. There is a council in each department elected half by the lower area units and half by the occupational, professional family, and veteran's associations. The latter elect 1/3rd of the National Council and the National Congress. The leader, De Gaulle, has the power to choose the secretariat and the executive body. The *assises nationales* elects a National Council which formulates policy and meets twice in a year.

CONCLUSIONS

We may now draw a few conclusions. First, political parties are essential in the mechanism of government today. Secondly, parties can flourish only in liberal society where there is agreement on fundamentals, the acceptance of the integrity and good faith of one's opponents and the admission that one may be as fallible

as one's opponents. Thirdly, parties perform today useful functions unknown to classical democratic theory, for they are able to bring together behind a common programme people as individuals would be too disparate in capacity and ideas to affect the course of events. It is, therefore, essential that parties are regulated by law as well as by the constitution. A democratic constitution has to be worked by parties. These are political dynamics. If a constitution is democratic and the parties which are called upon to work it out are anti-democratic in their internal organization, they will always try to wreck the constitution itself. It is, therefore, of fundamental importance that there should exist a harmony between the constitution and its instruments which political parties are. Fourthly, and this can be clearly seen in the Indian context, the introduction of political parties and party discipline into indirect democracy has added a complicating factor to the simple picture of classical theory. The representative is tempted by the pull of individual self-interest, the interests of his constituents, and his party's interest. He may overcome these and concentrate on what is good and yet he may discover that [illegible]

related to the latter. Generally, the parties of the left are better organised than those of the right and often have a larger membership but this does not prevent the parties of the right from polling formidable totals. Even within well-organised parties it may be found that despite a large party membershipp in a certain area, a party polls relatively few votes, while the same party obtains more votes in a district in which its organisation has left much to be desired. Thus, while all important political parties of democratic countries are mass parties as far as the electorate is concerned, some of them have no mass organisation but rest on the shoulders of a few men and Committees. Sixthly,—and this is about the origins—there were parties in parliament before there were parties in the country. Historically, therefore, parliamentary groups later branched out into the country and formed electoral Committee. In countries like India, the evolution was reversed creating a degree of maladjustment between the organisational wing and the parliamentary wing. Historically, again, the two party system is not the outcome of the electoral system in any country. The substance of the party system depends on and derives from the interests which men engender in society and the form of the relations that are organised between them. In this sense we can define a political party as a collection of individuals clustering around an interest whose furtherance they make into an issue and w[illegible] ideal. Finally, we are in b[illegible] view[1] that whether a [illegible] the purpose of democracy depends on the degree of class strati[illegible]

1 Gunnar Heckscher : *The Study of Comparative Government and Politics*—p. 152.

cation and the degree of class consciousness. The more stratified the society the more easily a multiparty system can be established. The greater the class consciousness, the more necessary a multiparty system is to preserve stability.

4

PRESSURE GROUPS

The anonymous Empire—In the last chapter we suggested that a political party is a collection of individuals clustering around an interest. We may, here add, that the individuals forming a party are involved in the political process and are willing to assist in forming a government if called upon to do so. It has a political programme. On the contrary, in most modern states today there are bodies of men and women who do not appeal to the electorate on the basis of any programme but who are concerned with specific issues. They are called Pressure Groups. They are not solely political organisations and they do not put up candidates for election. It is true, that sometimes the distinction between them and political parties tends to fade away. In a one or two-party system there is an obvious difference between interest groups and political parties but in a multi-party system, as in France, the basis of parties becomes parochial so that parties become interest groups. It must be stated, however, that the multiplicity of parties does not prevent the growth of many other groups bringing pressure to bear on them. Men need fellowship with one another almost as much as they need individuality. This fellowship, they cannot find in the state which is too remote and impersonal, not at any rate in the liberal democratic state which is mainly limited to the purposes that all share in common. They must, therefore, seek it in voluntary associations which cater to the diverse interests of free personality. Those who share a particular skill, experience, or outlook on life, will always respond to one another if they are given the chance. Again, modern democratic states provide wide latitude to associations. Easy transport and communications make it possible for persons sharing common interests, experience and outlook to organize on a national and even international scale. The result has been a spontaneous group life without parallel in history. It is, of course, true that the power of the groups varies. This power in democratic politics, depends on the degree of vigour and single-mindedness a group will show and also on members it attracts. Pressure groups may, therefore, be defined as a medium through which people with common interests may endeavour to affect the course of public affairs. In this sense, any social group which seeks to influence the behaviour of political

officers, both administrative and legislative, without attempting to gain formal control of government, would be a pressure group. It uses its means and persuasive powers to obtain certain political decisions without having or seeking the power to make them. There are also groups which do not directly or consciously exercise any political pressure, but which in their relationship to the general structure are so important that they cannot help influencing political developments as well. Religious bodies are the best example of this. Then, again, there are small independent interest groups representing small but active minorities, in the circumstances of different political systems and settings. There are, also, such groups as the bureaucracy and the military which are not in the category of pressure groups but which are an important step in the political process in many parts of the world.

The example of Germany may be cited. In 1870, 1914, 1918 and in 1933, the influence of the military was entremely important, regardless of what we think about the manner in which this influence was actually used. In Latin America and the Middle East the role of the military has been vital in the political processes. If in a given situation the army aligns with a party or an Interest Group, important changes may take place. The influence of the army may be reactionary or progressive and a student of political organisation must examine each case on its merit.

In short, pressure groups are found among all elements of [illegible] tics that otherwise would be impossible. These groups include business groups, woman, minority, labour, farm cooperative, church, veterans and professional groups and they commonly employ agents which in the U. S. A. are known as "lobbyists" to keep in close contact with government agencies and to bring the group-influence to bear on legislation and administration. They also attempt to influence the conduct of government by winning the support of public opinion for their aims, and vast amounts are spent in this process. Press, radio, television, and public-relations experts are used in order to build up goodwill for their objectives and to create attitudes among the people that are generally helpful in the realisation of these objectives.

Growing importance of pressure group.—At one time these interest groups were viewed with alarm and moral indignation. As Friedrich has put it, "they were held up to scorn both by muckrakers and by sane students of politics. They were the sinister force gnawing at the foundations of modern democracy, of representative government, and the word "lobby" supposedly comprehended a whole congeries of abuses, corruption, fraud, and the like."[1] Gradually these groups came to be recognised by socie-

[1] *Constitutional Government and Democracy*, p. 460.

ty as inevitable and today they are regarded not only as a necessary evil but as a healthy factor in political dynamics.[1] Such groups have always existed although today these are more complex than before. In families, wives are influenced by husband's views on candidates and parties. Churchgoers are likely to be affected by different parties' attitudes to their Church. In our professions we are influenced by what are called "face-to-face groups". That is quite simple. What makes the group complex is the fact that today it exists as an institution which wields the power. As one authority has put it : "Two hundred years ago it was not necessary to seek out the interest group itself, but merely to know of the interests of particular members of the two houses of Parliament. Today, as the phrase has it, individual M. P's are often merely the "spokesmen" of groups which brief them as their representatives. Politics has ceased to be a network of personal relations manifesting themselves in Parliament. The proliferation of groups of all sorts has given the group itself its own status and the extension of bureaucracy has made the most common channel of communication and correspondence between officials."[2] Today, these groups influence the legislature as nothing else can. They have become a legislature behind a legislature—or what Professor Finer calls "the anonymous empire."

What factors have led to the increasing importance of the pressure groups ? How do they influence ? In what circumstances do they influence more than in others ? While in different countries different factors have operated, we may make some general obervations with regard to some common force. In the U. S. A., Britain and in Canada and Australia, the interests worked and pressed upon each party. In a country like France where there is multiparty system, the interests associated themselves more or less with particular parties. Parties were thus gradually identified with interests and legislatures yielded to them without any body knowing what actually happened. All sectional or special interests could be, and were, rationalized as general interest and were paraded as national interests. In the U. S. A., the continental size of the country, the absence of responsible government and, therefore, the assumption of legislative initiative not by the Executive but by the Congress, and the vagueness of party programmes all created a situation in which interested citizens

1 Witness what Churchill said in the Select Committee of Privileges in the course of proceedings on a charge that a M. P. accepted financial aid from outside sources : "Everybody here has private interests, some are directors of companies, some own property which may be affected by legislation which is passed and so forth. It is always the understood thing in the House that every body makes himself perfectly safe by declaring any special interest he has in any matter about which he speaks......we are not supposed to be an assembly of gentlemen who have no interests of any kind. That is ridiculous. That might happen in Heaven, but not happily here." Quoted by Beer in "Pressure Groups and Parties in Britain" : *American Political Science Review*, March, 1956, p. 6.

2 Verney : *The Analysis of Political Systems*, p. 134.

were driven together in support of or in opposition to legislation which was of special interest to them. That is how in fact the so-called pork-barrel legislation emerged in the U. S. A. Bills which are enacted to provide appropriations for political purpose to special group or region of the country are known, to opponents of the legislation, as "pork-barrel" measures. Now, this designation originated in 1823, when the first appropriation for rivers and harbours was enacted. The number of such organizations, groups and interests has increased to such an extent that today they are nationally recognised. In Britain, the principal factor in the growth of pressure groups has been the role of reform movements in the 19th Century. Bentham, Cobden and Mill were all associated with them and they were bound to parties. On the continent, private groups existed. In a general sense, the doctrine of welfare State and the growth of government interference in the economic life of most of the States today has accelerated the motion of pressure groups. The State has become the largest employer and even in the U. S. A., the Government has to subsidize—even in those industries which are in the private sector—shipbuilding and transportation costs of all kinds and regulates commerce, communications, and agriculture. This has been an extremely important development for it has made an increasingly larger number of people dependent on government policy—people who are "determined that they shall not suffer unnecessarily by any failure to apply the right pressure upon the Administration at the right time." As the powers of the Government grew, the prestige of the Parliament fell. As parties got identified with special "interests", members of representative assemblies succumbed to special interests, the representative quality of these assemblies changed. As party discipline became tighter, the status of the individual legislator declined. Votes and discussion in the House of Commons lost all colour, for, people are more interested in the Government's negotiations with the Unions advocating "special interests" than in the outcome of the vote in the House of Commons. It is in this sense that these interests constitute a legislature behind the legislature. The advances in technology and science and the development of mass media has given these "interests" the means of publicity. With all this paraphernalia the pressure groups have become kingmakers in modern democratic [illegible] republican societies. Their importance, however, is [illegible] certain situations than in other.

Professor Finer has observed "where political [illegible] weak in principle and organization, the pressure [illegible] flourish; where pressure groups are weak, political [illegible] be feeble, and where political parties are strong, [illegible] will be curbed."[1] Now this is not quite true [illegible] parties are strong in principle and organization [illegible] than parties in the U. S. A. But shall we say [illegible] for this reason, are less influential in Britain [illegible]

1 Finer : *Governments of Greater European Powers*, p. [illegible]

If these groups seem on the surface less evident and less aggressive in the British system, it may be because they have found alternative means of influencing legislation The British parties, as we argued in the last chapter, are in large measure coalitions of particular groups who influence party attitudes from within. The various ministries usually provide formal, though not highly publicized, machinery, whereby the points of view of the interested groups can be brought to bear upon contemplated legislation during its maturing stage. Strength or weakness of political parties, therefore, do not seem to have any relevance with the strength or weakness of interest groups[1] But we are not suggesting that pressure groups have precisely the same degree of importance in U. S. A. and U. K. irrespective of political circumstances. They have one role in presidential types of governments, and a different position in a parliamentary government.

Now, in the U. S. A., the government does not possess legislative initiative, and the Congress plays a much greater role in law-making than the President. The Government is organised on the basis of separation of powers. In any case, for any law to be enacted [illegible] the President and [illegible] the vital need [illegible] tees of the Congress. Again, in the U.S.A., "in the absence of normal social intercourse between leaders of interest groups and Senators and Congressmen, lobbyists have to be employed to apply persuasion on behalf of their principals often by tactics which seem to verge on bribery and corruption." The fact that American politics has local basis, that the country has a big size, and has enormous divergence which makes federal policy the outcome of bargaining between regional interests further brightens the prospects of pressure groups. In Britain, on the contrary, there is no separation of powers, the government is responsible to the Parliament, the legislative initiative is in the hands of the government. Once you apply the right degree of pressure at the right time on the Ministers, you can secure the passage of a bill or see that it is dropped or modified. In this sense in the U. K. "the pork-barrel is kept locked up in 11 Downing Street."[2] The Government has, of course the effective power [illegible] pressure [illegible] the law. In France, on the contrary, pressure groups are more powerful and more irresponsible and this is largely due to the fact that France has never accepted the full implications of

1 The truth is that a two-party system as we have in the U. K. or in the U. S. A. is not precise enough in reflecting the intricate pattern of view points on a multitude of issues.

2 A reference to the Chancellor of the Exchequer. See Jennings, Parliament p. 200.

parliamentarism but has retained certain conventions characteristics, notably that of power being predominantly in the Assembly.

With regard to the Soviet type of executive (government by convention) it may be stated that although pressure groups in the accepted sense are not permitted, there is always a tremendous pressure of the C. P. S. U., the bureaucracy and the military on Soviet policies. Again, under Article 141 of the Soviet Constitution, the right to nominate candidates is secured to public organizations and societies of the working people, Communist party organizations, trade Unions, cooperatives, Youth organizations, and cultural societies. If it is contended that ultimately the C. P. S. U. dictates all nominations, it must be conceded that the principle of group nomination and the further principle of wide participation through groups at this stage of the political process is officially accepted and constitutionally recognized.

FUNCTIONS OF PRESSURE GROUPS

In what ways do these pressure groups influence the political process ? What are, that is to say, their functions and what is their technique ? Groups did not occupy a prominent place in the liberal democratic doctrine in the beginning but the early distrust of estates and groups was soon replaced by a close reliance on group organization. On the one hand, the working class had to depend on organized effort in order to secure its demands; on the other, the industrialists were forced to form combines and monopolies in order to exist. Groups, therefore, in both cases were dictated by the necessity of survival. The Liberal hostility to groups continued in various forms and the term "vested interests" acquired an undeserved contempt, for those who oppose "vested interests" and base their opposition on grounds of "national interests" are really defending their own interests in the name of national interests. In our times, the Fascist doctrine is really a group theory of politics "which is contemptuous of anything to do with individualism" In communist societies, the substratum of social and political organization is the group—the Party, the Youth organizations, the Unions. It is only some "bourgeois" intellectuals who evolve their political theories in ivory towers, who cling to the glory of individualism, which, in our view, is the outcome of either ignorance or hypocrisy. Those who raise moral objections against "groups" do not take us anywhere, for, an "unethical" practice attributed to a group is really attributed to the individuals directing the group. And if you insist that it is the group which has done a wrong, it may be retorted that the State is there to put it in its place. If the State fails in doing it, it is again, the failure of the individual.

It is thus quite obvious that pressure groups are not only inevitable but also desirable. The view that lobbying and kindred practices are improper topics for "genteel discussion" is out-of-date today. They are there and they need cause neither indig-

nation nor alarm. If they stoop to bribery, corruption and clandestine activity, that only means that there is need for reform and control. It is true that backstairs influence is bound to rouse suspicion, it smells of intrigue and is certainly objectionable in method if not in content. The average citizen has no lobby to make noise for him and is naturally angered by the ease with which organized interests maintain close and intimate connection with government and get things done often at his expense, that is, at the expense of unorganized interests. The producers are organized, the consumers are not; the former can always get results from their contact with government at the expense of the latter. In the U S A, in 1945-46, price controls of war-time were quickly dropped because of business pressure. But, then, what is the way out? You have to pay some price for having chosen democracy as a way of life. One of the most important aspects of the democratic process is freedom of association. The answer to one pressure group is another pressure group; the reply to organization of special interests is counter-organization. Pressure groups may even cease to be clandestine and may come out to carry on openly, if consultation is recognized as legitimate and desirable. That will give them respectability. You cannot argue [illegible] is base[illegible] good b[illegible] that a [illegible] fore, in [illegible] people given at the polls (very weak argument) will produce in its legislation "the highest possible expression of the common good." If this were true, it would follow that it was undesirable for any individual or group to try to exert pressure or influence either on the legislature or on the government. But it is just not true. The picture of a "people wholly absorbed in the public as distinct from the private good arising from that absorption" is, in our view, wholly unrelated to facts. Indeed, if it were true, not only would there be no need of pressure groups, there would be no room for political parties either. More people are absorbed in personal interests than in public questions, and the mass of citizens cannot afford to give more than a tiny fraction of their time to them. The days of leisure based on slavery are gone and the modern machines may save time but the industrial age does not provide leisure which could enable the citizens to remain absorbed in public questions. Moreover, public interest can never be divorced from narrow special interests. A Gandhi can do it successfully, although even he often took shelter under the cover of "inner voice" which revealed to him what true public interest was. In any case the men who can achieve such detachment are rare and divine revelations of the common good vouchsafed to men may vary. A consensus in that case may be impossible. All of us may agree that the Chinese aggression must be resisted—that is our general will. But this will may not disclose to us how

to do it, with whose help and at whose expense. It does not tell us what law ought to be made on a given day in peace time. How can we, then, depend on this general will which at best is vague, at worst it may lead to dictatorship of a narrow interest? Thus, as a practical matter of deciding what should be done in public interest "the choice is between meek submission to some dictated formula, and a formulation, always partial and incomplete, that emerges from the competition, clash and compromise of a great variety of individual and group interests" A democracy must necessarily choose the latter, for, diversity is its *raison d'etre*. Few people find full expression of themselves in one interest. And most of those who share a particular interest are reluctant to push it to the limit because that would jeopardise other interests they cherish. A farmer's lobby may be interested in pushing up agricultural prices and, therefore, in keeping up the demand for grain and so the sale of liquor. But as normal human beings they are also interested in a temperate society and this interest moderates the other interests. This multiplicity of interests, on the one hand enriches life, and on the other, checks extremism. Pressure groups, therefore, by encouraging clashes of interests lead to consensus. A society always in agreement to the minutest detail as to what was right would have easily "muzzled the cranks, throttled discussion, and trampled on minorities, exhibiting all the earmarks of a totalitarian regime and impoverishing life for the sake of a few hard and fast conceptions of what was good." If Democracy is government by talk and discussion, a democratic government must endeavour to achieve a balance of diverse interests by mediating between them. Balance of power may be a dangerous game in international politics, for, nations claim to be infallible and have the power to back up their claim. Balance of power or of interests in a society is always welcome for here the unit is an individual and most individual members of the diverse interest groups are vitally concerned in the preservation of the community. The result is, that different pressure groups while competing with each other seek ultimately eventual accommodation. The picture painted by some people that pressure groups drive schism in the soul of a nation is perverted and divorced from reality.

The objections to pressure groups, therefore, are for the most part ill-conceived. Today if we wish to oppose the "vested interests" (of a group), we can do so effectively only through group organization. It is only for this reason that even teachers of Universities whose ethical duty (according to the liberal democratic doctrine) is to supply moral leadership to society, and whose ideal (according to concepts of Dharma of Acharya) should be an austere life, find it hard to do anything without some sort of group. The hand of the government is no longer two feet long. Planning and positivism has pushed it beyond any limit and today we need "groups" as a shield against the sword wielded by the government. The terms "pressure groups," "Interest Groups"

suggest a bad odour but not all "pressure" or "interests" are bad or have bad motives. It may be that sometimes through pressure group, outside narrow interests attempt to obtain special concessions at the cost of the people, but it is equally important to remember that these groups also "help to prevent Governments from imposing unfair burdens on the unorganized masses.... and where party programmes tend of necessity to be general, group policies and proposals can be usefully specific." The fact is that today there is no contradiction between the interests of the individual and those of groups. There is abundant choice and there is no coercion, at least, in societies which are genuinely democratic. Pressure groups, therefore, far from being an obstruction to democracy, are really its *sine qua non*. The argument, that where people govern themselves, there is no need for these groups is as fallacious as the argument that where people govern themselves, there are no serious differences between the Government, and the individuals. Government, after all, is not something static; it is a "process"; it begins functioning after it is born. It is not merely a status, it is a function. It involves the data on which policies are formed; it also involves sense of discrimination and a choice of alternative courses of action. And it involves all this whether it is self-government, or any other type of government. On this reasoning, howsoever popular a government may be (it may even represent the dictatorship of the proletariat) it needs to be carefully watched after it has been elected. The responsibility of the individual does not end with the casting of vote. Men and women can function as individuals at the election; they may, again as individuals, write in the newspapers or make speeches to influence the government and create public opinion. But will the modern government be amenable to such individualistic pressures, particularly when it has the assurance of being popularly elected. I criticize a policy and I do it regularly with all the passion I command but the Government dismisses me as a cranky, irresponsible chatter-box. And as soon as I form a group, it is an end to my powerlessness, sense of futility and a feeling of barrenness. The effectiveness of my effort will now depend not on the mercy of a minister but on the quality of my aims, the size and the quality of my group. Pressure groups, therefore, keep democracy alive during the interval between the elections and constitute a barrier against *inter regnums*. By their zeal and enthusiasm, their expertize knowledge and specialised skill, they influence law-making on the floor of the legislatures and in the Committee rooms. We must, again, warn against the danger of regarding these pressure groups as inherently bad or sinister, for today it is expected that every man has his union and he can organise himself with his fellows to protect his interests. These organisations or groups may concern themselves only with economic matters—rates of wages and hours and conditions of labour—or they may go further and attempt to protect the trade or profession by imposing standards of recruitment and insisting upon certain

qualifications. Economic considerations are never absent entirely from these activities, but there is, also, some pre-occupation with the raising or maintaining of professional standards and of rendering service to the public. They may sometimes be actuated by motives of their private benefit rather than public interest, but, so may be the Government or the individual citizens. But they perform a most useful function by furnishing valuable data and advice to law-makers and administrators on specialised and technical matters pertaining to their respective fields.

Another important function of the pressure groups is in relation to the process of representation. In a country as large and as complex as the U. S. A., the individual citizen requires some organizational device in addition to the political party for bringing his special and specific interests to the attention of the policy-mak [illegible] for [illegible] givi [illegible] a geographical basis but the voter's basic interest does not lie wholly in his election district. It is more deeply affected by his business, professional and social relationship. People with like interests, therefore, tend to unite in a group in order to influence public policy. These groups, then, are sure to possess a legitimate place in the political process by giving expression to the views of the particular segments of society they represent. In this sense the pressure groups are said to be an answer to the problem of occupational representation.[1] The sectional interests are, then harmonized and the general welfare is ensured. As Mr. P. Herring has written : "Pressure groups representing the community broken up into its occupational and economic interests call attention to the forces that must be reconciled and the differences that must be compromised."[2] In this sense pressure groups serve as a bridge between policy and popular aspirations. Finally, these groups may also play very valuable part in the nomination of candidates for election. In theory, the candidates should neither be nominated by the people (for that may weaken party discipline), nor by the caucus (for that may restrict the choice of the voter). If this is a valid proposition, the nomination of candidates by groups (in which direction a lead has been given in the Soviet Constitution referred to earlier in this Chapter) seems to be a very sound alternative. Finally, it must be said that the actual influence of pressure groups in a society will depend upon the range of activities entrusted to the government. If a Government keeps off the economic arena, the pressure groups will have little to do as in Canada before 1945. But if the range of activities is wide and the state is a positive state, the pressure groups will be very active.

Technique of pressure groups.—Pressure Groups all over the

1 H. A. Bone : *American Politics and the Party System*, 1949, p. 242.

2 *The Politics of Democracy*, p. 327. Also refer to V. O. Key : *Politics and Pressure Groups*, p. 149.

world make use of different techinques to achieve their objectives. Attempt is made to secure nomination and election of friendly legislators, who may later be used to get favourable laws enacted. In the United States, it does not even matter whether the candidates selected by the Pressure Groups are democrats or republicans. They are supported
the questions in which par
rested. The degree of pres
of a particular Pressure Group. The American Federation of Labour, for example, because of its size, can always ensure the election of particular candidates friendly to labour. After the election is over, the legislators in their own interest, cannot refuse to serve the ends of these Pressure Groups. Those who vacillate after the election, are sure to be defeated at the next election. Moreover, members of the legislature are constantly kept under a heavy fire of pressure because most lobbies are very active in the capital.

ssary information and accurate statistics Most of the law-makers have hardly any time t
of the data supplied by
the necessary arguments.
and views, the truth can always become available.

These Pressure Groups also take pains to educate members of the legislative committees, because the real work of law-making is done there. They take great pains to convince the legislator that they enjoy the solid support of his constituency. People in different walks of life in the constituency are pressed to write letters and send telegrams and memorials to the legislators to vote for or against specific measures. Sometimes delegations are despatched to impress the legislators. Pressure Groups not only inspire and support laws they want, sometimes they themselves draft it and present it to the Congressional, Committees in the United States of America. They have contacts with the civil servants, who do the job without loss of time. They are in the full knowledge of administrative process and they know at which desk the real work will be done. Outside the legislature and the administration, Pressure Groups occupy themselves with preparing public opinion through speeches, books and pamphlets, special articles and new releases, radios and motion pictures. Special text books are pre-

1 Corry : *Democratic Govern ent and Politics*, p. 313.

pared for schools and even Universties which can impress young minds of the virtues of private ownership or of state regulation. All this is enough to establish that Pressure Groups no longer thrive on bribery and corruption; they utilise effectively the entire paraphernalia, which democracy and science have given to modern age. There is a degree of outright corruption or back-stairs intrigue, but it is on the decline.

In Britain it is not easy for the Pressure Groups to influence individual members of Parliament because of a strong and tight party organisation. Various interests sometimes succeed in influencing the choice of candidates in particular constituencies, and they can even extract promises from prospective candidates. But this is very rare and pledges are often not given. In the Parliament, members as a rule, vote for their party. The main sphere, therefore, where the Pressure Groups can get on with the job, is the party and it is with one or the other party that most of the Pressure Groups align themselves. The Trade Unions, for example, are usually with the labour party and a labour government is specially responsive to the claims of organised labour. On the other hand, the Farmers' Union is associated with the Conservative party. The business groups are, in general, in line with the Conservatives. Another important factor to be taken into account is, that the time given to Private Members Bills in the British Parliament, is extremely limited. Most of the legislation favoured by special interests would involve a lot of expenditure which private members cannot afford. In fact, the Private Members' Bills in British Parliament has no chance of passage until they secure the support of the Cabinet and the Pressure Groups know it. All that they can gain through the introduction of Private Members' Bills is publicity for their point of view which, at best, can work as an indirect pressure on the Cabinet. But, then, before finalising a legislative policy, the Cabinet usually consults all the organised interests concerned. For example, before the labour government nationalized the Coal Mines, the Air Lines and the Railways, it consulted both the management and the Trade Unions in these industries. Even after a law has been passed, special interests are generally represented on an Advisory Committee associated with the [illegible] the legislation. The theo[illegible] a pure fiction. The Briti[illegible] between a great range of interest, each of which claims to be representative of the public interest. It tries to find accommodations that are acceptable or tolerable to the interests concerned and that still enable it to carry out the pledges of the party." Whenever the government wants special knowledge of facts, it can always appoint a Royal Commission of Enquiry, which invariably consults all interests affected. Such bodies perform functions similar to those of Congressional Committees in the United States. They arrange public hearings for the various interests on a legislative proposal. When the government decides to accept the recommendations of

such a Commission, it will always take into account the special interests. All this involves more complex negotiation, which can materially affect the final shape of the proposed statute. Even after a bill has been introduced by the government, Pressure Groups can vehemently criticize it even though they had been consulted before. Representaions can be made directly to the Minister against the proposed bill; if they are not attended, a degree of pressure may be exerted on the members of Parliament and channels of public opinion are mobilized. The Incitement to Disaffection Bill 1934, and the Population Bill, 1937, were materially changed by the Government in response to pressures of various interests; the Coal Mines Bill, 1936 was altogether dropped; some proposals of the Finance Bill of 1937 were also dropped. The reason in each case was widespread dissatisfaction in the House of Commons in the fostering of which organized interests had played a major role. As Sir Ivon Jennings has put it : "The objective of Pressure Groups in Britain is always to convince the Cabinet or the Departments concerned that proposed legislation should be passed, amended, or rejected."

In Canada also, Pressure Groups influence the elections and maintain direct contact with the Government. In India lobbies are fast emerging. Most o [illegible] offices in New Delhi and in s [illegible] with the Ministers, through [illegible] control, through a large number of highly paid jobs, much can be given to those who are either friends or relations of ministers and through direct financial contributions to political parties, organized financial interests can always influence policies.

PRESSURE GROUPS IN BRITAIN, CANADA, AND INDIA COMPARED :—

Thus the technique of Pressure Groups usually consists in study, research, opposition or support to legislation, propaganda, organizing meetings, lobbying and meeting the legislators and administrators. In the U. K. these groups are accepted and recognised [illegible] ed and is fully used by government departments. The Ministry of Labour occasionally publishes a Directory of Employer's Associations, Trade Unions and Joint Organisations in which all those bodies are listed which are related to labour. It is accepted without question that the Ministry itself, other government departments, and private concerns would always consult these bodies when matters involving their interests are concerned. The consultation takes place through committees, either by membership or by presentation of memoranda. Formal consultations and informal day-to-day contacts are a regular feature. "There is hardly an occupation," Mr. K. C. Wheare writes about Britain, "upon which a Committee could deliberate in this country for which

there could not be found some union or association to represent and advocate the interests of those engaged in it."[1] Many of these groups act in an advisory capacity to Government Departments in the U. K. In Britain, party discipline does not leave much discretion to the members of the Parliament. The pressure groups, therefore, tend to influence the leadership rather than rank and file. But, since even the leaders cannot easily fall to the charm of special interests, the latter seek an open alignment with a major party in the hope of being able to insert its wishes into the party platform. Thus the Federation of British Industries is aligned with the Conservatives and the Trades Union Congress with the Labour. Other interests such as National Union of Mine workers, the Transport and General Workers' Union, the Ship Building Employer's Federation, the National Farmer's Union, Electrical Trades Union and the United Textile Factory Workers' Association *etc.* have their constituent branches. There are less well-known trade organisations like National Plumbers Society or the National Society of Brushmakers. Again, there are not only association of employers, but also groups of employers *e.g.* the Association of Animal Gut Cleaners Ltd., or the British Button Manufacturers Association. Nor are these groups confined merely to private interests of trade and professions. There are also what can be called groups of public interest, although there is no guarantee that these would necessarily behave with more public spirit than the former. Sometimes local government units organise themselves into groups *e.g.* the County Council's Association, or County Councils in Scotland. Again, branches of local government activity group themselves into associations *e.g.* the Associations of Education Committees. At times, local authorities join with other public bodies or with some department of the national government in forming an association to promote an interest, like the National Housing and Town Planning Council. Then, there are private groups which advocate some belief or opinion or something which they conceive to be of public interest *e.g.* the Royal Society for the Prevention of Cruelty to Animals and the National Society for the Prevention of Cruelty to Children or the National Smoke Abatement Society. There are also associations whose interest is not merely the betterment of conditions with regard to pay and hours, but they are also interested in professional standards *e.g.*, the National Union of Teachers. Finally, there are the straight-forward contracting interests like the Asphalt Roads Association Ltd. In Britain as well as in Canada, it must be emphasised, pressure groups function within the framework of limitations imposed by the facts of Cabinet Government. It is the Cabinet which formulates policy whose final adoption by the Parliament is ensured by vigorous party discipline. Interest groups, therefore, cannot hope to get far by lobbying individual members of Parliament or urging their case on parliamentary committees. These channels are not totally neglected but to get quick ...

1 *Government by Committee*, p. 32-33.

representations, written or through delegations, must be made to the Cabinet.

This is also true of India. The people outside, obviously, will know very little of what transpired in the cabinet or how much a particular decision has been influenced by a particular representation. Nobody, for example, knows yet the reasons responsible for the delayed release of the sensational 800 page Vivian Bose Commission's Report on the Dalmia-Jain group of Industries. The report was submitted on June 15, 1962 and it took more than seven months for the Commerce and Industry Ministry to place this report before Parliament (Dec. 23, 1962), only a hundred copies of the report were printed and it was reported that an Under Secretary was entrusted with the task of distributing the report. The copies reportedly were numbered one to hundred with blue pencil and made available under official receipt to selected officials in Government Departments. Even M. Ps. interested in the subject could not secure copies of it. The report was placed on the table of the Lok Sabha but it soon disappeared. The Communist Party's weekly, New Age of Feb. 10, 1963 reported that "the Parliament Library has now no copy of it." More interesting was the manner in which the report was released to the Press. The Ministry of Commerce and Industry gave seven copies of the Report to the Press Information Bureau which were duly distributed to the four big dailies, two economic dailies and the national news agency—the P. T. I. This implied that even out of the seven copies meant for the press, the Dalmia-Jains cornered two. The ordinary newspapers were not given even the truncated, colourless Government summary of the report. The result of this all was that the public—the average man—was effectively kept in the dark about the sensational findings of the Vivian Bose Commission. Nothing was done by the Commerce and Industry Ministry, the Press Information Bureau, the P. T. I., and the monopoly newspapers in the country to take the people in confidence about it. The Hindustan Times and the Times of India published the news of the Report making it appear least important.

Two aspects of the question are of importance—the contents of the Report and the pressures which successfully blacked out the Report. The Report stated, inter alia, the insurmountable difficulties placed in the way of the commission by interests affected by the proposed enquiry. Records were not made available and some were even destroyed in order to thwart enquiry; questions by first class witnesses were not answered; the validity of the appointment of the commission itself was challenged. The Commission, on the basis of limited evidence concluded that Dalmia alone made a personal gain of Rs. 260,22,781 between 1946 and 1956 at the cost of the investing public. The loss to the exchequer from the evasion or avoidance of Income tax ran to Rs. 145,19,790. Ram Krishna Dalmia, the Report says, was the master mind behind all the various malpractices. For a full ana-

lysis of the Report the reader can refer to the *Link*.[1] The second and the more important question is that of pressures on the union Government which sought to conceal facts from the public. The New Age of Feb 10, 1963 has this to say about these pressures :[2]

"The capital's corridors are humming with rumours about the high power pressure brought on the government, by the Dalmia-Jains to keep the commission's report in the ice-box..... Rumours claim that a Cabinet Minister, who has been the target of consistent attack in the monopoly press was offered a cease-fire in the papers controlled by the Dalmia-Jains as part of the bargain to keep the Vivian Bose report secret. Another Cabinet Minister was offered help in a take-over bid of a language daily. It is not known whether he accepted the help, but the language daily has passed on to the control of the Cabinet Minister. These rumours receive credence perhaps much more than warranted by facts, by the manner in which the whole affair of the enquiry has been treated by the Government."

Similarly, the impact of secret party Caucus on policies is there although the exact measure of it may not be gauged. In Britain, India and Canada, therefore, pressure groups work "more unobtrusively and with less publicity" than in the United States, "where the party and the Cabinet insist on making policy and have to take the full responsibility for it", there is less candour in acknowledging the influence of pressure groups. Also, frequent Congressional investigations of lobbying in the U. S. A. have brought a good deal of information to light and encouraged further private investigation and research.

But in Canada the pattern of pressure groups resembles more that of the United States than that of Britain. The Canadian Federation of Agriculture is a highly effective organization of farmers. The Canadian Manufacturers' Association and the Canadian Chamber of Commerce are less cohesive. Organized labour is split in several groups and many of them are affiliated with American Unions. All the trades and industries have their own organizations and several professional, reform and philanthropic organizations also exist. Their main purpose is, as in Britain, to influence the government, but their tactics are somewhat different. They attempt to influence elections in Canada so that support in the House of Commons may be built up. In most constituencies a particular industry may be predominant so that the elected member, whatever his party affiliation, has to represent some one interest. For instance, every member from the Prairie Provinces must be an advocate of agricultural interests. Again, party discipline in Canada is loose. These factors ensure some measure of legislative support to interest groups in Canada. Publicity is lavishly financed and many groups maintain their headquarters in Ottawa. Some use the services of parliamentary

1 *Link*, Feb. 3, 1963, New Delhi, pp. 10-14.

2 *New Age*, Feb. 10, 1963, p. 16.

agent or send occasional deputations. They secure information from ministers or officials and keep in touch with sympathetic members of Parliament. As and when particular issues arise, the pressure groups become active. In some cases the influence is more permanent. For example, the Canadian Federation of Agriculture functions as an advisory body to the Department of Agriculture and carries great weight with it. In Canada, again, most of the economic activities are not carried on at Ottawa but at the provincial level. Consequently, the Dominion Government acts in a narrower field. We have already referred to the general law that "the pressure of interest groups on the government varies directly with the scope and intensity of government activities." Since 1945, the activities of the Dominion Government have widened considerably and there has been the consequent gravitation of pressures and pulls of interest groups even at Ottawa since that date.

One more factor having a bearing on the role of pressure groups in Canada must be stressed. The Canadian Civil Service is comparatively smaller and less complicated. Interest groups, therefore, can put through their case with much greater ease. The Canadian Civil Servant is not as great an expert as his British counterpart and, therefore, in Canada reliance has to be put on the information gathered from the organized pressure groups. Finally, in Britain and Canada as well as in the U. S. A. and India, the interests seek to be heard not only on what laws must be made but also on how they should be enforced. The interest groups are, therefore, related as much to law-making process as to the process of administration. The impact of these interests is as comprehensive as the Interests themselves. They have means of access to government and these means ensure that their knowledge, experience and point of view will be fully considered. Once this is done, the demand for proportional and occupational representation becomes pointless and loses all force.

Pressure groups in the U. S. A.—In the United States, the pressure groups have played a role unknown in other countries, for, here as we noted earlier, the pressure groups influence individual members of the Congress. This is how, "lobbying" came into vogue—a practise intended to influence legislators to vote for or against impending legislation.[1] These groups constitute the greatest single element in the political pattern of America. Unlike Britain they do not by and large concentrate in one or the other of the two major political parties, but they are regional or sectional and as such are usually courted by candidates of both parties. Mr. E. S. Griffith suggests that in the U. S. A., there are four major groups with very great political power—business, agriculture, labour, veterans and that a fifth group, the aged, is emerging on the horizon. Then, there are the Government employees,

1 The term arose from the use of lobbies, or corridors, in legislative halls as places to meet with and persuade legislators.

Negroes, consumers, conservationists, international cooperationists and the patriotic front which represent a second tier. Finally, certain professions *e.g.* the lawyers and doctors are influential within a narrow field. It must, of course, be remembered that there are cross sections in these groups. Business is not entirely united: and "big business and little business lobby incessantly." There are divisions within the agriculture--irrigation farmers vs. ordinary peasants, inter-crop rivals, inter-section rivals within the same crop. Similarly labour and other interests have their conflicting interests. These conflicts are vocational as well as regional. There are also urban-rural conflicts.

In the U. S. A., therefore, there are a wide variety of groups. In business, there is the Chamber of Commerce and hundreds of other groups such as the National Association of Manufacturers. In Labour, they have the American Federation of Labour, the Rail-road Brotherhoods, and the United Mine Workers and the Congress of Industrial Organizations. Among the professional groups, the best-known are the American Medical Association (A. M. A.), the American Bar Association and the National Education Association. They are active in politics and influence legislation at the state and national levels. For instance, in 1949, the A.M.A. spent the largest sum of any organization in lobbying activities in the nation's capital. Even the religious faiths have legislative programmes in the U. S. A. For instance, the National Council of Churches (Protestant) take positions on an issue like racial discrimination. During the struggle for prohibition, the church played a vital role in the enactment of the 18th Amendment. During political campaigns, references are made to the Church vote. Women's organizations such as the League of Women Voters, the American Association of University Women or the Business and Professional Women all participate in political affairs, and every member of the League of women voters takes part in state or local groups at some point. The main achievements of the League include election improvements such as the installation of Voting [illegible] organisations (for the improve[illegible], Community Improvement As[illegible] street light or police patrol) and civic clubs such as the Rotary, Kiwanis, Lions, and Civitan. These groups select certain community projects to sponsor and support. For all these groups, advertising is the most conspicuous medium.

Have these groups exercised a sinister influence? Now some groups (like some individuals) have been parochial, unscrupulous and irresponsible. Some of them have sponsored bad laws and have opposed good causes. But in general lobbying cannot be said to be an evil. They are inevitable in modern age, for, today government has to secure adjustments between economic groups. It is an age of organisation as Mr. Griffith writes, and what is more

1 E. S. Griffith, *Congress : Its Contemporary Role*, p. 109.

natural than that the normal political alignment by party should be supplemented and in a considerable measure superseded by group action centering around a common point of view on a given issue. Many lobbies provide congress with reliable first-hand information of considerable value, although a few of them, maintained by powerful and predatory organisations, have given the practice an undesirable connotation. In short, the pressure groups though complex and incoherent are a most powerful political force in the U. S. A. As Professor Laski noted :

"There is a real sense in which these pressure groups despite their seeming incoherence are a kind of congress behind the Congress whose authority must not be minimised. They can do a great deal for a member of the House, not least for the unimportant or the new member. They can help him with his speeches. They can organise for him a publicity back home or in his state which he himself might not so easily secure. They can see that he mee[illegible]
And si[illegible]
within [illegible]
correspondents which the great metropolitan newspapers maintain in Washington, they can, if he is helpful to them, do something to build up, if that is possible, into a national figure. At the least, if he is co-operative they can make his constituents feel that their representative in the House is something more than the local boy who has made good. If he wins the support of the right lobbyist at the right time, that may well be a decisive factor in his political career[1]". In fact, in the U. S. A., all conditions favour the growth of pressure groups—loose party organization, freedom of expression, wide range of government activity and a free-for-all law-making process. Here the majority party does not hold the monopoly of defining public policies and the executive does not monopolise the drafting of an authoritative legislative programme. The Congress operates through Committees which are always open to pulls and afford hearings to interests which can always get things done by putting their case before the indivdual Congressmen or the appropriate Congressional Committee. The result is that hundreds of different groups maintain offices in Washington. Some are, of course, more influential than others, for some are better equipped with means of propaganda and research than others. The lobbyists are richly paid and they, as well as the legislative agents, [illegible]
procedure and are at [illegible]
Usually they are dra[illegible]
ex-congressmen and retired civil servants. In short, these pressure groups in the U. S. A. try to influence congressional nominations and elections, and they maintain pressure on the members of the Congress and officials. Finally they pour out continuous propaganda in order to influence public opinion. They do all this

1 *The American Democracy*, p. 84.

not merely at the national level but also at the level of State governments. In this sense they are a third house of the legislature operating outside the constitution but not the less effectively for that reason.

THE FRENCH PRESSURE GROUPS

In France also there are a large number of economic, social and intellectual groups that press the legislators for attention to their demands, although the French pattern is different from that in the U. S. A. and the U. K. Here, multiplicity of parties permits the existence of splinter groups of purely regional or even purely parliamentary status so that the line between the political party and pressure group becomes much hazier. Special interests get affiliated to these splinter parties. For instance, the trade unions are allied to the leftist parties while the rural areas and middle classes are tied to the Radicals. The P. R. L. and the Independents represent big business and the upper strata. The M. R. P. relies on the Catholic Union as well as the middle classes. On occasions the major policies of the governments have been frustrated by the pressure groups which are referred in the French press as "states within a State," "neo-feudal lords", and "economic congregation." The Economic and Social Council which continues in the Fifth Republic represents the triumph of pressure groups in France. Thus in general we may say that pressure group activity in France has been quite considerable. A major example of this fact is the inability of French Governments to obtain necessary tax legislation from Parliament and their dependence upon borrowing to meet budgetary dificits.[1]

PRESSURE GROUPS IN LATIN AMERICA

In Latin America, business, farmers and propertied classes, whether they be nationals or foreigners, function politically as pressure groups. In most of the Latin American countries they do not function as openly, nor use the progapanda media, especially the press, as in the U. S. A. Lobbying in the legislature is also not so frequent and so well organized for the obvious reason that political power rests with the Chief Executive more than with the Legislature. But in every election and in every important law that comes before the legislature, the economic forces take sides. Political campaigns require financing and in states with low standards of living ready cash is not easily available. The moneyed groups, therefore, play an important part in the struggle. Purchase of votes is not unusual and the history of Latin America is replete with examples of coups d'etat and uprisings financed by business, either national or foreign.

THE "UNSEEN" GOVERNMENT OF JAPAN

Before 1945, in Japan there existed an extra-constitutional "unseen" government directing and controlling those who formally exercised power. This extra-constitutional government consisted

1 H. Finer : *op. cit.* p. 341.

of 4 principal characters—the Genro, the Supreme War Council, the Zaibatsu and the political parties. The Genro was a group of Elder Statesmen to whom the Emperor turned for advice and about which there was nothing official. Gradually the number of these advisers dwindled until 1940 when the last of them died. A more important pressure group in Japan has been the Supreme War Council which was on top of the regular machinery, and completely dominant over it. It consisted of the heads of the two defence departments and its most influential members were the field marshals and fleet admirals, the Chiefs of Staffs, and others designated by the Emperor. Gradually, this War Council began to assert independent authority so that it acquired the power to determine the organization and strength of the armed forces and to have direct access to the Emperor, without any allegiance to Civil agencies. Thus a Civil government headed by the Emperor was now face to face with an extra-constitutional military government. Increasingly this body dominated not only in military matters but in all spheres of policy. This hegemony of the army was aided by the provision in the constitution that the ministers of war and of marine must be serving officers which in practice, implied, that the army and the navy could control the formation or even force the dissolution of any Cabinet by just refusing to nominate these ministers unless they could feel satisfied with the composition or policies of the Cabinet. The Chiefs of Staffs could even appeal to the Emperor directly against the Prime Minister who headed the Cabinet. Thus the army constituted the greatest and the most important single pressure group in Japan. Again, Japan being primarily an agricultural country, a high proportion of the men in the army were peasants, and the officers were chiefly drawn from the class of small landowners. This meant a close bond between the army and the rural areas. The junior officers were, therefore, fully conscious of the fact that the agrarian problem of Japan was the weakest point in their country's economy and that the deep-rooted troubles of Japan could only be removed by an elaborate and well-thought-out plan of foreign conquest. These adventurous views had permeated the ranks of the army.

Moreover, the army leaders had their connections with Industry and business which again was the third principal in the invisible empire of Japan. By 1940, about 15% interests controlled 70% of the country's trade and industry, and the four famous houses (Ziabatsu—Mitsui, Mitsubishi, Sumitomo, and Yasuda,) controlling about 150 business concerns controlled more than 35% of the country's business. These business families were intimately connected with the army and the Government. They were tied with the Privy Council and the House of Peers by marriage alliances, and being big tax-payers, they invested their money in public enterprises and were, therefore, the advance agents of the land empire abroad. Even the leading political parties of the land were affiliated with one of the Zaibatsu (Money Cliques) and were

financed by them. There was, therefore, no difference at all between the two parties of Japan—the Seiyukai (Friend of Politics Association) and the Minseito (People's Political Party), the former being an agent of the Mitsui, and the latter of the Mitsubishi.

At the end of the second world war, in the first phase, the occupation authorities pursued a policy of demilitarization and decentralization, demobilized the armed forces, abolished the army and the navy and dissolved the general staffs. On January 4, 1946, a purge directive was issued which specifically sought to eliminate the organization and the leadership of pre-war and war-time ultra-rightist bodies including the secret patriotic societies. Earlier, by a directive of September 6, 1945 large industrial and banking combines were dissolved and the Ziabatsu were smashed. The securities held by the 4 Ziabatsu families and by the holding companies were taken over and broken into small lots. In many cases the allied firms were detached from the Ziabatsu and made separate organizations. Ziabatsu headquarters were also dissolved. But this phase ended in 1947 when the exigencies of the Cold War had driven the U. S. A. to a policy of reviving Japan and restoring the Ziabatsu. By 1953 the industrial firms had consolidated and realigned themselves along the former Ziabatsu lines. On July 1, 1954, the old Mitsubishi was re-established. The post-war parties of Japan—the Conservative Party and the Liberal-Democratic Party are "grandsons, at least by marriage", of the old pre-war Seiyukai and Minseito. After 1947, the army was also revived. In short in the post-war period the pre-war pattern of pressure-groups re-emerged in Japan. One of the important pressure-groups in Japan today is the Green Breeze Society (Ryokufukai)—a loosely organized group of independent Councillors and non-professional politicians. It is aligned with the Conservatives. The most important pressure-group which is very powerful at all levels of government is the so-called "Oyabun" which a recent writer has described as "a wirepulling boss or mugwump." It is a modern throw-back to the security of feudal hierarchy and control. "Oyabun" in the cities controls construction projects, labour, scarce materials, gambling, gangs of hoodlums, street-stalls and political party organization. In rural areas, "Oyabun" reflects an "almost undisturbed feudal landlord-tenant relationship." It has an extremely wide network of organizations and is a "vast underground government extending from the smallest village to the Capital city itself."[1] In the cities, there are associations called as *tonari-gumi* which the order of March 31, 1947 sought to abolish. In the rural areas there are the Sonraku of Buraku based not on kinship but on proximity possessing local leadership, and enjoying status by experience.

Of the post-war pressure groups in Japan, the principal busi-

1 *American Political Science Review* Vol. XIII. No. 6 Dec. 1948 pp. 1149-1162. "Under-Ground Politics in Post-War Japan."

ness groups are the Federation of Economic Organizations, the Japan Federation of Employers Associations, the Chamber of Commerce and Industry and the Japan Management Association. Regularly, they carry on analysis, research and publication work and occasionally they issue public statements urging the political parties and the government to follow a certain policy. Views are also pressed in face to face meetings with politicians and administrators. Organizd labour is stronger and more vocal today than before, and at present there are about 6½ million workers in 35,000 trade unions which are organized in National federations. The 2 largest federations are the General Council of Japanese Trade Unions (Sohyo) with over 3 million members, and the right-wing Japan Trade Union Congress (Zenro) with about a million members. It may be stated that in Japan labour is not as effective politically as may be surmised and this is largely due to the fact that there are differences in emphasis and interest between the local Unions and the large national federations. Then, again, there are farm organizations with a degree of influence on public policy of taxes on farmers. At one time the Imperial Agricultural Association was landlord-dominated. Today, there is the Agricultural Cooperative Association (Nogyo Kyodo Kumiai) which consists of about 45,000 local cooperatives and about 10 million members. The right to vote given to women in 1947 encouraged them to form a Federation of House-wives (Shufu Rengo Kai) containing about 300 local organizations of women in Tokyo. The most significant achievement of this organization was its successful campaign for the reduction of price of milk in 1955-56. Finally, there are veterans' organizations the most important of which are the National Liaison Association for the Restoration of Pensions for ex-officers, and the League of Friends from the same locality. The former successfully pressed the government to restore pensions of the ex-officers which had been abolished by the occupation authorities. All these pressure groups organize meetings on a national and local basis, mobilize public opinion, pass resolutions, wait on the members of government, in delegations, meet legislators, bring out propaganda literature, and try to cultivate leaders of the ruling party.

PRESSURE GROUPS IN INDIA

Pressure groups in India have not achieved that position which they have done in democratic countries in the West. The Indian National Congress itself began as a pressure group which sought [illegible]

[illegible]

from the British control. Under the national movement there developed a large number of local groups, peasant organizations, welfare bodies, cooperatives, and handicraft bodies, which whi[illegible]

participating in the struggle for freedom also developed their own special interests and some continued to function even after the transfer of power in 1947. Many Gandhian organisations, for instance, continue to exert pressure on the Congress party and the governments. Some of the older groups in a general re-alignment have appeared as political factions. An example of the latter type is the Akali Dal which directly participates in elections and at the same time seeks to exercise pressure on the Union Government as well as on the government of the Punjab in favour of a Punjabi suba. While in the West, the power of the government grew in response to the demands of the pressure groups to act on their behalf, and while in a country like Japan, the scope of government activity increased in response to foreign pressure, in India "the scope of government has grown not as a means of coping with western intrusion but in large measure to cope with an enormous rise of mass expectations." These mass expectations also led to the growth of a large number of organised interest groups. Most of these pressure groups in India are controlled by a small group of intellectuals but some of them are associated with political parties.

In broad terms, we have 4 categories of pressure groups in this country: (*a*) special interest groups such as those of business, trade unions, cooperatives and social welfare agencies, peasant organisations, teachers and students organizations and cultural associations; (*b*) communal groups and religious bodies; (*c*) groups based on narrow casteism and linguism (*d*) Organisations representing the Gandhian ideological heritage which have their impact on political process in India in several directions. Business is heavily concentrated in families like the Tatas, the Birlas, the Walchands, the Dalmias, the Jains, the Singhanias the Goenkas, the Tho- [illegible] ave the capacity to in- [illegible] substantial contributions [illegible] parties, distribution of remunerative jobs in industrial firms, and educational institutions. They have set up scholarships for social and technological work, and construction of temples and Dharam Shalas. Then, there are the so-called business communities—the Marwaris, the Gujerati-speaking Jains and Parsee businessmen, the Chettiars of South India and the Maharashtrian and Madrasi Brahmin industrialists. These communities also wield a considerable influence and control jobs. Finally, there are the business associations, some of which like the Employers Federation of India or the Bombay Mill-owners' Association are functional, but some like the Muslim and Marwari Chambers of Commerce are based on religious or individual business community lines. These associations try to harmonize the business point of view, raise business standards and solidarity. On top of these business associations is the Federation of Indian Chambers of Commerce and Indusry (FICCI) which maintains a research office in New Delhi approaching "the status of a lobbying agency." Pressure of business groups

on our public policies is very considerable. The bulk of India's press in all languages is controlled by them. Journals, such as Commerce, Capital, Indian Finance, Eastern Economist, Tata Quarterly, Industrial India, Hindustan Times, and Times of India are all business advocates. Several Chambers of Commerce bring out their own journals. The news agencies are largely controlled by foreign business. The entire background of senior officials in our Secretariats is influenced by business interests. They have an important voice in the Parliament and a good share in the political management of the country. People like John Mathai, T. T. Krishnamchari, Homi Mody, C.H. Bhabha, A. D. Shroff, Purshottam Das Thakurdas, G. L. Mehta, Dr. B. C. Roy are among those who have occupied prominent positions in the administration. They are now making a bid to capture the Congress organisation or to utilise the Swatantra Party as a rival to it. They exert pressures on Government to obtain licenses, favourable clauses in laws, and convenient policies. We have already referred to the way the Dalmia-Jain Industries successfully pressured the Union Govrnment in hiding the Vivian Bose Commission Report which graphically made out a catalogue of dirty tricks of Ram Krishna Dalmia and some of his relatives.

The impact of the trade unions is curtailed by their inner divisions and unhealthy rivalries which have been undermining the strength and solidarity of the working class. In fact the trade unions in India are mere adjuncts or ancillaries of the political parties in this country. Today, there are 4 major unions claiming a membership of over 4,000,000 with leadership still concentrated in the intelligentsia. The All-India Trade Union Congress (AITUC) is under the influence of the C. P. I while the Indian National Trade Union Congress (INTUC) operates under the wings of the Congress. The two smaller unions—the Hind Mazdoor Sabha (HMS) and the United Trade Union Congress (UTUC) are affiliated with the Socialists and the Communists respectively. Their relations are most bitter and despite efforts, no code of discipline has yet been possible. We find ourselves in agreement with the observations made by Prof. David Morris :

"Indian trade unions have not developed along the lines familiar in the U. S. or in Western Europe; therefore, their role in the political process is not similar to that generally played by trade unions in other parliamentary democracies. Trade unions in India act neither as pressure groups nor as political parties as such. Rather they have been organised by the middle class leadership of the various political parties as arms of those parties. This political use of the trade union movement has led the Congress governments increasingly to use state powers to discipline labour and to regulate its welfare. This role of the state has in turn altered the character and power of trade unions in India."

What we said of the trade unions, is *mutatis mutandis* applicable to the peasant organisations such as the All India Kisan Sabha

dominated by the Communists, the Hind Kisan Panchayat affiliated with the Socialists, and the United Kisan Sabha allied with other leftists elements. The experiment of Panchayat Raj may bring about a rural lobby in Parliament. Political parties may penetrate the villages in a bid to capture Panchayats thereby giving the peasant a further feeling of confidence and realization of self-interests. But that is yet to come. The students groups also reflect the same party divisions—the Students Federation being Communist controlled, the Students Congress and now the National Union of students being an ancillary of the Congress. The Jan Sangh and the P. S. P. have their own organisations among the students. At places the students are organised on a regional basis in groups such as the Bengalee students Association or the Bundelkhand Association. Different political parties use the students for election purposes, finance their activities and even sponsor candidates for offices in the student's unions. At times university unions become the battle grounds for politicians who have even gone to the extent of organizing strikes, hunger strikes and counter-hunger strikes. In this race the Congress has not lagged behind the Jan Sangh and the Communists. Cultural groups, such as, the India-China Friendship Society, Indo-Soviet Cultural Society and the All-India Peace Council have been the happy hunting grounds of the C. P. I. The All India Women's Conference, now affiliated with the congress was "particularly active as a pressure group" while the Hindu Code Bill was being considered by our Parliament.

So far as the communal groups and religious bodies are concerned, most of them have entered politics as regular political parties or have been so identified with them as to cease to be real pressure groups. These parties, we have considered in the last chapter. Here it is enough to say that a communal body like the R. S. S. may be said to be a pressure group in relation to the Jan Sangh. When it was founded in 1925 it served as the armed guard of the Hindu Mahasabha and its members served as a volunteer corps at conventions and rallies sponsored by the Mahasabha. *It was non-political in the sense that it did not directly* sponsor candidates for election. Their alleged complicity in Gandhi's murder and the subsequent ban which the Government put on them obliged them to have a new political garb. The R. S. S. leaders like Vasant Rao, Mauli Chandra Sharma and Devi Dayal Upadhyaya prevailed on Dr. S. P. Mukerji to desert Nehru on the issue of the Delhi agreement between Nehru and Liaquat and the Jan Sangh was ushered in before the first general elections. Officially, however, the R. S. S. is still out of politics but it has imparted its vigour, discipline and organisational efficiency and ruthlessness to the Jan Sangh. The R. S. S. leaders have been in the Jan Sangh Committees despite the insistence, that formally, even today the two organisations are separate. In fact, however, the Jan Sangh minus the R. S. S. is all wind and vapour.

1 *Ibid.* p. 268.

Then, there are certain groups which are based on narrow caste or regional interests. Casteism and regionalism are notoriously effective in the distribution of jobs at the highest level in this country—even more effective than considerations of Hindu vs. Muslim. There is a fashion amongst intellectuals to deny the communal virus and to refuse to face it squarely. But unfortunately, it is deep-seated and the effort to ignore it is partially responsible for its wide influence. Outside the army, one of the most effective forces in appointments is consideration for caste. There are not only the Hindu University, the Hindu Colleges, Muslim University and Islamia Colleges in India but there are Jain Hostels, Kayastha Pathshalas, Agarwal Vidyalayas, Brahmin Hostels, Harijan Hostels, Christian Colleges and Hostels and so on. Some castes are so well organised that in their institutions it is almost impossible to get a man appointed from outside the fold. Many educated people now dislike surnames just because the surnames in India announce the caste the knowledge of which by others may prove harmful to them. Marriages usually take place within the caste and despite social relations between two families of two different castes there are all the time mental reservations based on caste. There are numerous cases where the appointing authority belonging to one caste just cannot afford to appoint a person of his own caste howsoever meritorious he might be for fear of being misunderstood. Loyalties within one caste evoke similar loyalties in others and an "invisible law" comes into existence which mutilates the law which is supposed to be followed and respected. In Universities one can see medals awarded to the best Kashmiri Brahmin candidates. Scholarships are awarded on caste basis. Assistance to poor members of one's own caste is quite usual. And if to the bond of caste is also added the bond of region and the person with whom one is dealing belongs to one's caste and hails from the same region, there is a chance that he may supersede all others. The elite in a caste exerts great social pressure to provide opportunities for the less fortunate (really less qualified) members of the caste. General shortage of job opportunities helps the process of caste loyalty and nepotism. These loyalties are strengthened by caste marriages, caste customs, caste manners of celebrating festivals, and ancestral caste obligations. Now, this does not necessarily mean that a Brahmin will never fight a Brahmin or a Kayastha would never clash with a Kayastha. Narrow casteism obviously does not root out selfishness. Caste loyalty is a gross manifestation of perverted self-interest, and in the context of low standards of living, becomes a shield, a source of security. With the process of industrailisalion which is a great breaker of caste loyalties, there would certainly emerge voluntary pressure groups in agriculture, handicrafts, cottage industries, cooperatives, industry and so on. These pressure groups will be under the control of neither the government and parties, nor of caste elites and would lead to greater governmental responsibility, wider loyalties than those to castes or communities, and a greater

concern by political parties for concrete issues of public policy.

Finally, there is a whole goup of Gandhian associations with a unique prestige, a concrete personality, considerable standing and commanding respect in the highest quarters including the intellectuals. The like of it is not to be found in any other country today. Since Gandhi died within a year of the transfer of power and we did not have occasion to hear his pronouncements on many issues facing the government, the leaders, psychologically, tried to project their understanding of the Master in their utterances more than in their policies with a view to enlisting popular support. Gandhian doctrines, whether they are fully understood or not, are quite popular and all parties—even the Jan Sangh and the C. P. I.—exploit Gandhi's name. In some Universities in India courses in Gandhism have been introduced. Gandhian clubs, Gandhian debating societies, Gandhian Libraries have been set up and the purpose in most of the cases is to make political capital out of Gandhism. The "recognised" Gandhite would have access to the highest dignitaries in the land and through the close personal contact with Government would be able to exercise a significant influence. The Sarvodaya Samaj works through the Sarva Sewa Sangh, the village Industries Association, the Go-Seva Sangh, the All-India Spinners Association, the Hindustani Prachar Sabha and the Talimi Sangh. Then, there is the Bhoodan Movement of Acharya Vinoba Bhave which received the blessings of Dr. Rajendra Prasad, Mr. Nehru and others in the Congress who really speaking hardly believe in the Gandhian approach or principles. But they dare not say a word of criticism for fear of being accused of repudiating Gandhism. The P. S. P. leader Mr. Jai Prakash Narain, with all the study of Marx and Laski, became a Jewan Dani and occasionally issues decrees on moral and political questions. Even the C. P. I. is taking a special interest in the Bhoodan movement. The Shanti Sena of Vinobha who sets an example of simple and austere life and is called a "Sant", intervenes in the disputes between students and the University authorities, exercises moral influence on dacoits in order to persuade them to peaceful ways of life, and broadly, attempts to serve as living directives of state policy. In economics, the Gandhian groups successfully press the government to restrict the production capacity of cotton textiles and to promote cooperative handicraft production which to them is a way of life. They insist on prohibition and basic education as social policies. The source of invisible power of these groups is their refusal to accept political power which is regarded as an earnest of their sincerity, detachment and patriotism. Gandhi, after all, did not accept any office on the advent of Swarajya. So Vinoba Bhave and Jai Prakash Narain are 'people's guides" [illegible]
their purpose is to [illegible]
power of the people, [illegible]
power cannot achieve. Their means are personal example, a extra-party and direct approach. These groups, therefore

in the nature of "superministers" and Chief Ministers of States or Union Ministers would be only too happy to oblige them by making a decision which they would approve. All these groups are thus political in intent and effect but they neither hold office nor contest elections by organising a following. "This is a leadership outside party circles, outside government. The force of this extra-party leadership is not at once apparent to those accustomed to discover leaders in positions of established authority or in places of organisational control. But extra party leadership has become in India a force to command attention in political analysis, and the emerging non-conventional leaders have become persons to be reckoned with in political calculations."

But we must warn against the danger of overrating the influence of these groups. A few individuals like Gandhi and Vinoba Bhave may act as super-ministers but not even a man like Jai Prakash Narain. Gandhi was, before 1947, the Congress Party's "permanent super-President" and the C. W. C. was invariably formed according to his wishes, and in no decision of the Congress could Gandhi be ignored.[1] But sometimes the wisdom if not the motives of the pronouncements of Jai Prakash Narain are questioned and on the intellectuals he has no hold, even though he may be respected. Gandhian doctrines, in general, have no appeal for the intelligentsia although they may pay lip service to them to win popularity. Any body who appears in fine silken or woollen suits, smokes and drinks, takes meat, talks in English, has a car and a drawing room, a reasonable balance in the bank, sends his children to public schools and yet talks admiringly of Gandhian doctrines just will not be believed. Similarly, politicians whose regular diet is intrigue and whose business is self-aggrandizement, who jostle with each other in the race for offices and who make promises never intended to be fulfilled, who live like Nawabs or Rajas at the expense of the tax-payers, who thrive on corruption, inertia and maladministration and yet deliver lectures or sermons on Gandhian ideals are, in the public eye, just cartoons. Even the illiterate villager will easily see through the game. If, of course, you appear in public as Gandhi or Vinobha Bhave did,—an embodiment of all virtue—people will be completely captured. You must practise and be seen practising the moral principles you profess. Such a person, in America or Britain, may be respected but would never be a leader. In India, leadership will be entirely his. The people will not yield to a military dictator, or a political juggler without resistance but to such a leader they will surrender their all. And if one such man was assassinated in India by a bullet, that only indicates that there cannot be any guarantee against lunatics.

PROBLEM OF CONTROL OF PRESSURE GROUPS

After examining their general role, we may now say a word

1 Nehru : *The Unity of India.*, p. 122.

about the problem of control over the pressure groups. We have seen how powerful lobbies they have and with these they may well abuse their position and their valid role in the political process. The need to subject them to a measure of public control so that they function frankly, openly and by legitimate means, becomes only too obvious. The public has even the right to see that a pressure group vis-a-vis its own members is organised and functions democratically. As Pendleton Hering put it, "if the state is to be democratic, so must the smaller associations that bind men more intimately.[1]" These groups claim to represent an interest; they speak on behalf of a section. We have, therefore, to see that each one of them accurately reflects the will of those whom they purportedly represent. A group of teachers in a University or a college is manouvred by a clique who can bully, run about, and who make it impossible for the normal individual to come any where near it. They may even formally hold elections, and may have an elected working committee. Their general programme may appear to have been conceived in general interest. The group, may, nevertheless, not be able to speak for the general body of teachers if a small fraction of teachers actually attends the meetings of the group and if there is a feeling among the rank and file that the elections are all managed. There is, then, a case for a degree of legal control on these groups. It is true that regulations without undue suppression is always a very delicate task, and while the former is desirable and must be encouraged, the latter can be [illegible]

[illegible] based. We have already refuted the liberal democratic view that a body of citizens who have chosen teaching as a job have no ethical justification to form a group or a trade union. Teachers, like any other section of society, have every right to form associations in order to keep under scrutiny their service conditions, to safeguard their interests against outside onslaughts and to see that these interests are not ignored in the formulation of public policy. Such associations, quite obviously, are not intended to discuss academic issues which can be debated in academic bodies like the Senates, courts, Faculties and Committees of Courses. They are principally and primarily needed to eastablish a teacher's point of view on the administrative policies of their institutions and to be a watch dog of their service interests. But this they can do only if they function democratically, if they really represent the teachers, and if they inspire a feeling of trust and confidence among the average members. It is only for this that we suggest a degree of legal control. Their decisions must be required to be approved by an absolute majority of the total number of members. They may be required to hold elections by secret ballot and to file for public record complete data concerning that portion of their activities which is aimed at influencing government policy

1 *The Politics of Democracy*, p. 329.

and practices. They should be made to submit a full financial statement of all moneys expen
suggestions are based on the p
make these groups function in
would discourage them from en
activities. These measures will also educate the members of the groups and associations and may go a long way to overcome the problem of apathy shown by many members towards the internal organisation, election and participation in meetings. Of course some degree of apathy there will always remain and some members will always take more interest than others. Same degree of participation can rarely be achieved. But positive efforts and concrete measures are essential to energize the indifferent. After all, opinions within a group keep on changing and those who are leaders of an association today may be completely and even suddenly out of tune literally tomorrow. A political analyst will

conform to the same standards of conduct and behaviour as individual voters. We can hardly afford to leave all this to "the mutual interaction or counter-vailing power of the groups themselves." Unregulated group activities, in theory and practice can make a mockery of liberal democracy. On this reasoning all pressure groups need a measure of public control by legal regulation. The Federal Regulation of Lobbying Act passed by the U.S. Congress in 1946 is an example of this type of regulation. The law requires all legislative lobbyists to register with the Congress and to list by whom and how much they are paid. They must, then, file a detailed report every three months setting forth all money received and the way in which it has been spent. The Act does in no case curtail the right to act as a lobbyist, it merely requires disclosure of sponsorship and sources of funds. Similarly, propagandists or consultants of foreign powers, whether of American or foreign nationality, are required to disclose their connections by registering with the Federal Government, describing their duties, background and affiliations,. We are not arguing that all voluntary associations—clubs and societies—must be so regulated. What we argue is that those groups which expect to be consulted and considered by government must conform to certain standards. To oppose public control of the pressure groups is to assume that pressure groups and "public interest" are mutually inimical—an assumption which is totally outmoded today.

Thus, if democracy is to survive, it can only survive by striking a balance between pluralism and unity. Pluralism would mean encouraging pressure groups, each autonomous, democratically organized, and conforming to prescribed standards. The Unity with which it has to be balanced lies in an integration of results. This is neo-utilitarianism. This is Group utilitarianism of which

the Unit is not the individual but the Group. According to the original utilitarianism the individual was the judge of his own welfare; the ideal was the greatest happiness of the greatest number; and, therefore, that government was the best which would govern the least, *i.e.* which least interfered with the individual freedom. The group utilitarianism implies the groups as the best judge of its welfare. While according to Bentham and his disciples general welfare was the aggregate of the individual welfare, according to group utilitarianism the social good is the good of the groups added up. Each group, therefore, presents its demands on the government and asks from the government that which it believes to be in its interest. While the old utilitarianism sought non-intervention, the group utilitarianism seeks more and more intervention. The result is a positive theory of state and the growing power of the government to influence and shape the lives of the people. If, therefore, government is to be democratic, those groups in whose interest the government operates must function democratically. There is no longer any contradiction between government and pressure groups, for the Society that Government governs is multi-group in structure. While each pressure-group is a power-structure, having its limited membership, special goals, interests and values, organization, hierarchy unity, status, prestige, skill and resources, both technical and material, the government is the most important generalized power structure in society. While it is true that the interests which bring a group into being are never isolated from those of other groups, these interests can be promoted only through a process and conflict. Thus, a power-structured group must rationalize its own objectives and assail its competitor's programme in terms of current shibboleths. The most convenient medium of this is propaganda, which is so directed at the Government that leads to positive action. In the midst of the battle of propagandas too the Government must act as a shock absorber, a stabilizing influence and remaining receptive to the special pleadings of all groups. The Government is the focal point of these relentless pressures of clashing interests which the rulers as legislator, judges or executives have incessantly to resolve. It creates strains without doubt, and leads even to inner conflicts in the minds and conduct of the rulers, for, when one is subjected continuously to the contradictory stimuli of this sort, one's moral integrity and even mental sanity tend to become fragmented, confused, and often self-contradictory. As one authority has put it, "pushed and pulled in opposite directions by these pressures, one's judgment and actions are bound to be more or less inconsistent, and unsound, and one's personality increasingly neurotic."[1] But all this only indicates the dangers against which modern Government has to function. These dangers are from within, ever present, more serious than external threats. The need today, therefore, is a great public control of these groups, a realisation that they exist and

1 Sorokin Lunden : *Power And Morality*, p. 34.

operate. Let them compete openly. It is only then that a consensus is achieved and it is this consensus which forms the basis of public policy.

PRESSURE GROUPS AND FOREIGN POLICY

This consensus, in the context of foreign policy, is termed as National Interest which foreign policy seeks to pursue. Once National Interest is broadly defined and comprehended, a foreign policy seeks to bring into balance, with a comfortable power in reserve, the nation's commitments and the nation's power. The first task of the statesman, therefore, is to comprehend this National Interest—a difficult task undoubtedly. In the 18th Century, when absolute monarchy was the general form of government, there were no elections and no political parties. There were, of course, influential noble families, industrial guilds, and financial corporations. All these represented certain interests and all these sought the favour of the king either directly or through a minister. But in the middle of the 19th century the political pattern started changing. Industrialism as well as democracy knocked the basis of the old guilds and corporations, and the place of the noble families was now taken by Pressure Groups having a powerful interest, and having the ear not of the King, but of the political parties as in Britain or of the individual legislator as in the U. S. A. These groups exert pressure on the government to follow a particular course of action at home and a definite line in their country's relations with other states. A business group in one state has its interest and sympathy with a corresponding group in power in another state. It may even develop extra-territorial loyalty and may press its own government to have friendly relations with it. After the first world war, political parties acquired extra-territorial loyalties so that the fascist party in one state was more in tune with the fascist party in another rather than with its own government. The communist parties rejected all national boundaries and, therefore, the whole concept of National Interests and followed a course determined by the interests of World communism which in practice has been, till lately, the interests of the U.S.S.R. The conservatives in Britain, France and the U. S. A. during the thirties, pampered the fascist powers presumably as a safeguard against the danger of cummunism and in so doing perilously jeopardised their National Interest. Appeasement, however, was claimed by the British leaders to be a course dictated by the British National Interest. This example amply shows how difficult it is to define and comprehend National Interest at any time. Any party or group or groups that are in ascendancy at a given moment and that at any time can get what they want, either by capturing political power (in the case of a party), or by pressure on parties and legislators (in the case of pressure groups) may be said to represent for that purpose and that time the will of the nation, and therefore, National Interest.

Therein lies the impact of pressure groups on foreign policy. Their pivot, we repeat, is self-interest. Religious groups may seek protection for missionaries in foreign lands and they are active today in the Moral Rearmament movement. The missionary enterprise of the Churches, principally protestant, played a large part in determining the U. S. Policy towards China till 1947. It was an alliance of missionary groups with commercial interests which induced John Hay to enunciate the open Door policy. The weight of the Roman Catholic Church was thrown against the policy of recognition of the U. S. S. R. prior to 1933 and since 1945, it has been outspoken against that country because of the church affairs in Poland Hungary and Czechoslovakia. The Church opposed the Republic Spain in the thirties, was hostile to the new Mexico and was, on the whole sympathetic to Mussolini's Italy. It favoured Vichy France and Pilsudski's Poland. It admires Salazar's Portugal. The Church was notorious in influencing the British Tories and the French Conservatives. Its influence, by and large, has favoured the business point of view.

Business groups exert a tremendous pressure on the foreign policies of states which accept private enterprise and which believe in the ideal of welfare state. Large-scale business such as automobiles, trucks, tires, tools and machinery, may support expanded world trade and international cooperation and may also insist on protection of their foreign investments. But business which fears foreign competition *e.g.* the watchmaking industry in U. S. A. or the Cycle industry in India may fight for high tariffs. The operations of Dollar Diplomacy were largely inspired by business interests. In India the anti-Pakistan sentiment or now the anti-Chinese feeling finds a warm response from business. The oil interests of Britain and France were responsible for the Suez Crisis in 1956. The U. S. business constantly harps on the theme that the private enterprise is "an inherent part of the American way of life," and they have, therefore, opposed the use of E. R. P. funds by European countris for the assistance of socialist schemes. The conditions attached to the Marshall Plan at the insistence of the business groups in the U. S. A. included the stipulations that products shipped abroad under E. R. P., should come from the open market and not from government surpluses, that at least 50% of the products should be carried in American ships, and that all products should be clearly labelled "Marshal Aid from the United States of America" so that Europeans would know their benefactor was free enterprise America. The U. S. policies of actively helping French colonialism in Indo-China were mainly inspired by business. Again business favours the establishment or stabilization of privilege and reaction abroad. The British Queen and the American President were never troubled when a dictatorship was established in Pakistan and the former went to the absurd length of calling Ayub's regime a major experiment in democracy. Business on the whole stands for armament.

What we said of business groups is true of the groups of veterans and army leaders. These groups support dictatorships, regimentation, policies of expansionism, conquests and war. And these policies are rationalized as "patriotic preparedness." The veterans organizations in the U. S. A. have stood for a big navy and a strong army, restrictive immigration and non-recognition of Russia. They have also urged upon the Congress and the government policies of isolation, non-intervention, riddance of communists, and control of aliens. As Laski has put it :

"The American army leaders have tended, on the whole, to come to terms with interests that were either the direct supporters of dictatorship or prepared to collaborate with it. Certainly the evidence suggests that a large proportion of the Military Government officers in the Armies of occupation were suspicious of any Germans or Italians with Left convictions and were inclined to accept as true the insistence of Nazi Officials who were not well-known outside their local area that they had joined the Nazi party only as a way of keeping their jobs. . . Many of them had so venomous a hatred of communism that they regarded any progressive minded German as a communist, and they were even prepared to believe that Nazis were at any rate men who could be relied upon to assist in preventing a communist revolution in Europe."[1]

In the same category we might also place the so-called Professional Patriots who had been interested in preventing pollution of pure American stock, and have strongly opposed unlimited immigration, and have agitated for big navies and strong armies. It may, in general, be suggested that the groups of army leaders in all countries, in collaboration with business and finance capitalism have sponsored programmes of conquests. In Japan, for example, the hand of the army was at the back of Manchuria in 1930-31. In India, the retired Generals—witness the activities of General Cariappa—have broadly advocated in recent months a policy of war against China. We are not suggesting that such pressure groups do not play any role in societies where the state is integrated with one party. In the U. S. S. R., for example, the army under the leadership of Marshall Zhukov, by 1957, had become the major rival of C. P. S. U. which necessitated his liquidation. In the entire history of Germany, from 1871 onwards, the army constituted the greatest single pressure group. In France, the army leaders throw their weight on the side of reaction.

The pressure groups of the farmers have played a more important role in America than in other countries, although in our view, in future years, such groups have a considerable prospect in India. In America the National Grange, and Farmer's Union have consistently asked for tariffs on their product, for export subsidies and for exclusion of Argentina beef. The latter body has actively supported the Reciprocal Trade Agreements Pro-

1 Laski : *op. cit.*, p. 506.

gramme. The general law which applies to large-scale and small-scale business with regard to their objectives of free trade and international cooperation, and high tariffs and protection respectively, is also applicable to agricultural groups. It is only in this light that we can really understand the international mindedness of the south, the low tariff policy of the democratic party and the strong southern support of the Reciprocal Trade Agreements Programme.

The labour pressure groups, with a few exceptions, have generally favoured a leftist orientation in foreign policies in different countries. In the United States the labour Unions were largely concerned with domestic issues but after 1945 have tended to support the policy of containment of Communism. One association (Longshore Men's Association) went to the absurd length of refusing to load U. N. R. R. A. supplies intended for Yugoslavia as a protest against the shooting down of an American plane over that country. Now, in this case this labour Union did not merely exert pressure on the government to bring about a policy action but it took a decision independently of government by its use of the strike weapon. In countries like Italy and Germany where the party and the government are closely integrated, business and labour interests had to gain ascendency over internal economy. But in both cases the political elite of the party were effective only in-so-far as they were able to influence the elite. In the U. S. S. R. the industrial bureaucracy has been more effective than the peasantry, and in fact one of the tasks of Khruschev has been to break the former in so far as it was a cohesive force with its own vested interest. His policy, therefore, was to strengthen the party apparatus and this he achieved by the so-called decentralization of industry, and the substitution of the great centralised industrial ministries by Regional Economic Councils distributed throughout the U. S. S. R. We cannot, however, say that such forces can have any real impact on Soviet Foreign Policy.

Finally, we might say a word about regional and racial pressure groups. The importance of regional groups, theoretically lies only in States which are said to be continental. Regional groups play some part in the formulation of the U. S. foreign economic policy. For example, the Silver Block in Congress successfully pressed the passage of the Silver purchase Act in 1934 which was full of international implications. But more important are the racial and minority groups. These groups often attempt to shape the government policy towards the land from which they emigrated. In 1914, for example, the Germans in America favoured American non-intervention in the War. The Sizeable Irish Section of the U. S. population exerted pressure on the American government to press the United Kingdom in favour of transfer of power to Ireland. The Jews in America were extremely active in seeking the government support for a policy of establishment of Israel by partitioning Palestine. President truman's solicitude for the Jewish vote (in the presidential election) which is concentrated in certain political areas was largely

responsible for the U.S. policy which favoured partition of Palestine. During the 1930's the German-American Bund worked in support of isolationism and non-intervention in Europe in the interest of Nazi Germany. Other national groups in America, similarly sought to obtain favourable policies towards their native countries. The presence of a large number of Germans in the neighbouring States in Europe was fully exploited by Nazi-Germany in its programme of world conquest. The sizeable Muslim minority in India has its impact on India's policy towards Pakistan. A large Slav element in the Russian population has compelled Russian interest in Eastern European States. Racial groups (the Enosis in particular) have been a major factor in the problem of Cyprus. Now all these pressure groups in the context of foreign policy project their sectional interests forward by rationalizing them in terms of National interests.

CONCLUSIONS

It follows then that in a modern state pressure groups are inevitable, and that they must be recognised. Secondly, there is no longer any contradiction between pressure groups and democracy. Thirdly, sometimes the pressure groups may be motivated by unethical and bad motives but so are individuals, parties and governments, The remedy, therefore, lies not in suppressing them but in regulating them. Fourthly, these groups help a society in discovering a consensus and in comprehending National Interest which forms the basis of domestic and foreign policies. Finally, they constitute a most effective medium through which an individual citizen can participate in the political process.

6

ELECTORATE

Electorate of a State is that fraction of its population, constitutionally and legally empowered to participate in the governing process, through some specific action, and attached to the machinery of Government. It is that proportion of the entire citizen body, that are active citizens, or the number, that may, at any time, or in any way, legally exercise governing powers. In a Democracy, the citizen has, on the one hand, the right to equal freedom within a certain sphere from interference on the part of other persons, or of the government; and on the other, he has a right to share in the exercise of the authority of the State. The former implies civil liberties, which we will discuss in the next Chapter; the latter would lead to the necessity of a study of how the citizens actually express the State's will. They can do so, either directly by controlling the organs of government, or they may indirectly exert their influence through the pressures of public opinion. In a pure democracy, the electorate would coincide with the entire body of citizens, whose participation in the political process would be direct. This was possible, when the States were small in area and small in population. Today, however, we have large political units, and, therefore, no State finds it possible to widen the frontiers of electorate beyond a certain section of the whole population. This is usually done by fixing certain qualifications, which must be satisfied for entrance into the electorate. Secondly, even this limited body of citizens, who constitute the electorate, in actual practice, cannot possess all the powers of government. They must necessarily entrust the actual task of government to a much smaller body, which is called "the Government." The powers, which are delegated to the government are, of course, under the general supervision of the electorrate. Thirdly, the government, in its functioning, would try to attain maximum consensus and this would necessarily imply majority to support the government and a minority minorities to oppose it. The influence of the minority must be expressed. On this showing, in the present study, we examine the structure of the electorate and the limitations on their size, the powers and the general authority the electorate, directly or indirectly, and the ways and

through which the rights of the minority are protected, and their opinion expressed.

THE STRUCTURE OF THE ELECTORATE

It is true that with the gradual extension of the franchise to more and more persons, the dimensions of the electorate have been multiplying. The sovereign voters have to elect their representatives, who form and carry on the government. The primary means, by which people exercise their sovereignty, is the vote, and in different states, the right to vote is determined according to specific criteria. There is no uniformity in modern states, regarding the constitution of electorate. There are states, where the right to vote is given to all adult citizens, and there are those, in which the right to vote is restricted to adults, or only men, who possess specified qualifications in respect of race, property or education. In Britain, the United States of America, Canada, Australia, India and the U. S. S. R., the right to vote is given to all adult citizens; in South Africa and Switzerland, it is restricted. Today, by common consent, adult suffrage is taken for granted. Political equality is considered a basic principle of democracy and every form of restricted franchise is supposed to infringe the principle of equality between individuals in some degree. Obviously, if the right to vote is denied to some, their interest may be overlooked by the Legislature, or even by the government. But, then, there may be certain sections of people, who are likely to make a bad use of the votes. For example, below a certain age, the necessary discretion is not developed and the right to vote, if given to persons below that age, will definitely be misused. That is why in practically all modern states, age qualification is prescribed. Of course, the age at which a person is considered to be an adult, for purposes of voting, varies from state to state. In Russia, it is 18; in Germany, it is 20; in India, Britain and the United States, it is 21; in Norway, it is 23; in Denmark and Japan, it is 25; in Georgia and Kentucky, it is 18. in Britain, the legal voting age for women from 1921-30, was 30. Some minimum is patently necessary, since a child is hardly competent to make an intelligent choice among candidates and form a sound judgment on political questions.

Until recently, women were almost universally excluded from the votes. And this exclusion was not the result of any national theory. It was rather the outcome of prejudices about their social position. It was felt that women did not and could not engage in military affairs and were, for that reason, not entitled to enter politics. It was widely held that women were notedly inferior to men and would ill-judge political problems. It was argued that their rightful place was the home and that by participating in politics, they would lose their femininity. In Catholic countries, it was even alleged that women would vote in accordance with the instructions given by their Priests. Some people insisted that women should not meddle in politics, which should

be left to man, who, as the *Pater-Familias*, is the Lord of women. They should be adequately represented in politics by their husbands, fathers or brothers. Gradually, however, great thinkers of England, like J. S. Mill, began to plead for women franchise. Mill argued that women required the franchise more than men since, being the physically weaker, they are more dependent on law and society for protection. It began to be argued now that the introduction of women in the public life of the community, would lend a purifying, ennobling and refining touch. But it was really the services of women in the First Great War, which converted people to the cause of women suffrage and resulted in the passage of "Representation of the Peoples' Act" in 1918, which conferred the franchise on a woman, 30 years of age or over, who was herself, or whose husband was entitled to be registered as a legal Government Elector by virtue of the occupation of a dwelling-house, without regard to value of land or other premises, of the yearly rental value of five pounds. In 1928, "the Equal Franchise Act" was passed, which admitted the women to the franchise on the same terms as a man. These reforms were based on the realization of social and educational equalities of the sexes. The United States followed the example of England, and by the Nineteenth Amendment, full suffrage rights were extended to women in 1920. In India, although women have a few social and economic handicaps, they have, nevertheless, same right to vote as men. Today, in practically all the modern democratic states, women enjoy the right to vote. Even in Switzerland, where there is a traditional reluctance to pull women out of the home, a considerable movement for the women franchise is going on.

Another qualification for voting rights, insisted on by some countries, is that of citizenship. Citizenship is also decided on the principle that the nationality of a child follows that of his parents, or one of them, regardless of the place of birth, or on the principle that it should be determined by the place of birth, regardless of the citizenship of the parents. Aliens are usually excluded from voting rights, unless they are naturalised in accordance with the prevailing laws. Naturalized citizenship does not, of course, necessarily, carry with it the right to vote, for citizenship and suffrage are, by no means, co-extensive. In the United States, some states, at one time, allowed the declaration of intention to become a citizen as a qualification for voting, but this provision led to much corruption of both the Electoral and Naturalization Laws.

Yet, another qualification is that of residence, the principle, that in order to vote, a person must have been a legal resident at a particular place for a specified length of period. Most countries require a certain period of residence, before conferring the suffrage. In most of the cases, this residence is certified by some sort of registration with election officials. Property, as a [illegible] for franchise, used to be a universal practice. It was th[illegible] that men of property possess character, capacity, intellig[illegible]

and show true concern for the security of the state and stability of society and that, conversely those, who were propertyless, were men of no consequence, and, therefore, had neither the capacity nor the concern for the welfare of the community. With the evolution of democratic concepts, these ideas were revised. It was now argued that property may be the result of worst economic and social practices; that it is, usually, the outcome of exploitation and that men of property care more for their property than for popular welfare. Property qualification, therefore, has now been practically abolished. In India, payment of taxes or ownership of property is not at all necessary for voting purposes. In the United States, in five Southern states, payment of a Poll Tax, is a qualification for voting. In England, certain restrictions remain as to the value of the premises owned, leased or occupied. Just as property is considered as a redundant asset for voting purposes, similarly, education also is not regarded as an essential qualification for voting. At one time, literacy was considered as one of the conditions for the right of franchise. For example, under the "Government of India Act of 1930-35", education was one of the tests prescribed. In Italy, until 1912, those who could not read and write, and did not pay a small tax, did not possess franchise. In England, until 1948, Graduates of Universities were voters. In the United States literacy was required as a test for admission to the electorate. In modern times the tendency in almost all the states is to make education free as well as compulsory. Education, therefore, is no longer considered a privilege restricted to the few. It has, therefore, lost its importance, so far as voting rights are concerned. Again, it must be emphasized that ability to read and write does not, necessarily, imply either intelligence or wisdom, fearlessness or honesty. An educated man (educated in the formal sense) may be a rogue or a cranky. An illiterate fellow may be honest as well as balanced. Specialists or experts may be absolutely ignorant or indifferent to political matters. The Indian villager is famous for his shrewd commonsense even though, he is absolutely ignorant of alphabets. One may even go to the extent of arguing that formal education far from helping an average voter in forming an intelligent opinion on public issues, may even be an obstruction. Modern press is a monopoly affair and its appeal is to those who can read. Monopoly interests put their own influence in the mouth of those who glibly swallow whatever is poured out in their newspapers and journals. But this is an extreme view. We certainly cannot argue that there shoul·l be no education for fear of corruption. We only suggest that education, today, cannot be considered as a genuine qualification for purposes of franchise.

In ea[illegible]
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were excluded from political power. With the advancement of science and the advent of scientific spirit, politics was divorced

from religion. From the 16th century state became free from the tentacles of the Church. Religion meant authoritarianism and quiet acceptance of the dogmas; science meant enquiry and research and a defiant challenge of the accepted formulae. The spirit of science permeated politics and created the background for toleration. Science encourages differences and puts premium on reasoning. The dissenters who used to be burnt alive were now hailed as Heroes. Politics, that is to say, became secularized and with it, religion as a franchise qualification, completely disappeared.

Finally, modern states usually deny voting rights on moral grounds. For example, criminals and idiots and lunatics are excluded from the b[illegible] disqualifications listed [illegible] unsoundness of mind, [illegible] sometimes, those, who have been convicted for bribery in elections, are temporarily or permanently disqualified. We may, thus, conclude that today, right to franchise is based on the concept of citizenship and is not a matter of vested privilege. It is no longer associated with state's ownership and faith. Neither it is a matter of an abstract right, which people were supposed to possess under the so-called "Law of Nature". It is a right conferred by the law of the state. It is a political right intended to secure a competent and effective electorate, as a part of the governmental organisation. Its objective is to help the individual in developing his personality and to help the society in getting the benefit of his mature judgment. Through franchise, the individual helps the society and the society helps the individual. It is for this reason that representation has been encouraged in modern times and through representation, the problems presented by the size of territory and the numbers of people, have been got over. The whole society creates the electorate and the electorate elects the representatives—the representatives who make the laws and control the government. If these representatives commit errors of omission and commission, then the devices of initiative and referendum could be used. This, really, poses the problems of what the role of the Representative is and how can the electorate control the Representative. In the following, we will discuss these problems.

THE BASIS OF REPRESENTATION

Democracy is government by consent. It is established and realized by those who believe, that even though, counting heads is not an ideal way to govern, at least it is better than breaking them. The charm and glory of it lies in the relief it gives us from the paralysing terror of revolution. Where Government cannot be conducted by compromise, it will be managed by coups; where men cannot be persuaded to quit public offices quietly, they will be thrown out by force, fraud, murder and carnage. The basic

element., without which no community can call itslf truly democratic are : equality, sovereignty of the people, respect for human life, the rule of law, and liberty of the individual.

Now, broadly speaking, there are two forms of democratic government, direct and indirect. In a direct democracy, all the qualified voters assemble at stated intervals to enact laws and decide issues. The open air meetings in Switzerland or the New England "Town meeting" are good examples. Such a system too, was Rousseau's ideal political organization. Quite obviously, this is possible only in small communities, small in area and in population. In ancient Greece, for example, it was believed, that the city state should have no more citizens than could assemble and hear the voice of the orator. Modern states are, however, large units and the application of democratic concept to them has been rendered possible by the device of representation, resulting in what is called indirect democracy. This system rests on the machinery of popular representation.

The population of modern states, being large, every body cannot sit in the law-making assemblies or directly participate in the administrative or judicial functions. The voters elect representatives to legislate for them and in some countries, they also choose executive, administrative and judicial officers to perform various specialized tasks of the Government. The average citizen is associated with the jury and serves in the Army or is called upon to decide on questions of public importance, submitted to popular referendum or to be initiated directly. In some cases, he has an authority to recall those who have not served him well. He may take part in innumerable pressure groups and exert influence through them on policies of the state. He maintains a live contact with his representative who has to keep his ear to the ground to catch the rumblings of civic approval on resentment. Finally, the citizen is associated with a host of advisory boards and committees, which are widely used at all levels of the governing process. But it must be realized that the most important method of representation of the citizen in government, is the casting of the ballot, which leads to its formation.

The two most important questions that arise in a discussion of representation are :—(a) What is th[illegible] sentation ? and (b) [illegible] regard to the basis o[illegible] phical or Regional I[illegible] Communal Represent[illegible], Functional or Vocational Representation. Most countries, with representative governments, follow the geographical principle, dividing the country into districts of approximately equal population, each district electing a single representative by majority vote. This system is fair only if the boundaries of the constituency are frequently and fairly redrawn to take into account the growth and shifts in population; otherwise, some areas may be accorded undue weight, while others may

be seriously under-represented. In addition, the ruling party may manipulate boundaries as in the U. S. A., to capture as many seats as possible. To prevent this "Gerrymandering", the duty of redistricting in Britain and in India, is not in the hands of their Parliament, but in the hands of non-partisan bodies.

In Britain, in order that the people shall, at all times, be equitably represented by this means, Permanent Boundaries Commissions for England, Scotland, Wales, and Northern Ireland, established in 1944, keep constituencies constantly under review and submit periodic reports, either recommending some alterations in boundaries if, for instance, movement of population has made this necessary, or recommending no change. These changes of boundaries of constituencies, which came into effect in the 1955 General Elections, increased the number of seats in the House of Commons from 625 to 630. In India, the Parliament passed the Delimitation Commission Bill in December 1962, providing for the setting up of a Commission to delimit Territorial Constituencies for Lok Sabha and State Assembly Elections on the basis of population figures according to the 1961 census. The Commission is to consist of the Chief Election Commissioner and two serving or retired High Court or Supreme Court Judges. The Commission is assisted in each state by four members of the Lok Sabha and five M. L. As from that state, who will be associated members, without voting rights.

The Single-Member-district system, sometimes results in the practice of (as in the U. S. A.) electing to the Legislature, only the residents of the district. On the one hand, this leads to parochialism for "nothing more tempts a member to lend himself to the service of sinister interests than knowledge that defeat may mean the end of his political career." On the other, it leads to waste, for it narrows the list of candidates available to the voter and discourages many able men from running for office. "The ability at the command of a state does not distribute itself with mathematical accuracy over the electoral divisions." Allahabad may have a larger number of able and distinguished men, who can play a worthy role in the Union Parliament than Lucknow, and they must be permitted to contest from anywhere. It is all to the good, if Acharya Kriplani, defeated in North Bombay, finds refuge, say in Amroha. Moreover, the American practice also makes the representative a mere agent, who is supposed to secure every advantage for his locality rather than to advance the public interest.

PROPORTIONAL REPRESENTATION

Sometimes it happens that in a 2-party system, the minority voters go un-represented and the single representative regards himself as the *spokesman of the dominant majority party*. The situation becomes still worse, if there are a number of additional minority parties or groups of independent voters, as in India.

merits of individual candidates. It establishes a not too intimate contact between the members of his constituency. It reflects individual opinions as well as any system can. The List System places the responsibility of choosing the members not so much on the voters, as on the parties. Under this system, it is possible to dispense with bye-elections altogether by allowing the next candidate on the relevant list to take the place of the member who has droppe[illegible] whole, it may be said, that [illegible] representation of the people, [illegible] ensures the election of the ablest man of all parties and it may eliminate wastage of votes. It reflects the facts, whatever they may be : stability or change-indeed all the social conditions prevailing in a community. For instance, in an agricultural country, the elections under P. R. will bring to power the peasant party or parties, representing agricultural interests; in an industrial country, they will reflect the predominance of working class interest, and so on.[1] The P. R. would definitely reduce the personal contact between the member and his constituency; it may be prejudicial to stable Government, in that, it may encourage the splinter parties and would lead to coalition governments. It may even improve the chances of the isolated crank or fanatic entering the legislature. In any case, it would not be applicable to by-elections. It is too complex a system and usually confuses the voter. While this system has worked satisfactorily in Switzerland, Belgium, the Netherlands, Norway, Sweden, Denmark, Ireland and pre-war Czechoslovakia, it was abandoned in France, Italy and West Germany in favour of new electoral laws, which are a compromise between P. R. and majority plurality method.

FUNCTIONAL OR OCCUPATIONAL REPRESENTATION

Geographical or Regional Representation is sometimes criticized on the ground, that in fact, people do not share common interests just because they happen to reside in the same area and that they would be more accurately represented on the basis of economic or occupational groups. This is called Functional Representation. While this theory appears to be attractive at first sight, it will be found to be vague at closer scrutiny. It is not clear which groups are to be represented; on what basis the distribution is to be made among them; or what is to be the relationship of such a functional parliament to the geographically elected legislature, if any. It will be extremely difficult to define the groups, to determine to which group each individual belongs, to allocate representation among the groups in a fair manner and to ensure that the basic interests of public safety, health and order, will be adequately protected. Functional representation was experimented in the Fascist Corporative State of Italy and to an extent in Nazi Germany, where a system of estates for basic eco-

1 *International Social Science Bulletin*, Summer 1951. p. 357.

nomic groupings was established. These were not utilized as the basis for selecting a legislative chamber. In these cases, the system was devoid of any representative character in the democratic sense, because the modern pressure groups serve to provide effective representation for particular vocational interests in their dealings with government.

COMMUNAL REPRESENTATION

A variant of functional representation is communal representation, which gives first place to non-territorial consideration in forming constituencies; it links together voters from the whole country on the basis of characteristics other than that of attachment to a particular locality or area. The communal rolls thus formed may be sub-divided territorially for purposes of an election, but the communal character is given priority over the general characteristic, which every one may possess, that of attachment to some locality. The extreme case of this type is that contained in the Government of India Act 1935, which provided for separate or communal electorates. As is so well known to us in India, communal elections strengthen communal feelings, for, in public debates, appeals are made principally to the interests of each community, and people entering public life learn first to talk the language of communal politics, not that of national politics. The system of reservation of seats for scheduled castes in India, is a mitigated form of communal representation, which is no more than a transitional device.

OTHER METHODS OF MINORITY REPRESENTATION

In addition to communal representation, there are a few more methods intended to provide representation to minorities. These are :—(1) The Limited Vote Plan, (2) The Cumulative Method, (3) The Reservation of Seats, (4) The Single Non-transferable Votes, (5) The Point System, and (6) The Fractional System. Under the Limited Vote Plan, each voter is allowed fewer votes than there are places to be filled. It requires multi-member constituencies, with a minimum of 3 members. Each voter is to cast one vote for one candidate. If, for example, there is a five-member constituency, a voter may be allowed to cast 3 or 4 votes, but not all in favour of one candidate. In this manner, the minority party becomes reasonably certain of getting at least one seat out of 5, because voting strength of the majority suffers a huge loss of votes. Another method of minority representation is the Single Non-Transferable Vote, which gives each elector one vote only in a multi-member constituency. For example, in a constituency, in which 7,000 electors actually vote, and which is to elect six members, each elector has one vote only and any candidate supported by 1001 voters, is bound to be elected. This is obviously true, because, out of 7,000 votes, not more than 6 candidates can possibly obtain 1001 votes. The Single Non-transferable Vote has been used in elections in Japan since

1900. Then, there is the Cumulative method, under which a voter can cast as many votes as there are seats to be filled in. He may cast all his votes in favour of a single candidate, or he may distribute his votes among the different candidates. The right of cumulating all votes in favour of a single candidate enables the minority to concentrate its strength and secure election of their candidates. As far as reservation of seats is concerned, it can be done with or without weightage for minorities. For example, in India, reservation of seats is provided for Scheduled Castes. In Newzealand, seats are reserved for Maori candidates and voters. Again, it is possible to invent devices, which in effect, give the voter more votes than there are seats to be filled in, and enable him to put candidates in order of preference by the way in which he divides his votes between them. Finally, it may be pointed out that in Prussia, a form of minority representation, aiming to guard the interests of the Upper classes was in use. Under this system, voters were divided into 3 classes according to wealth, each class representing one third of the taxable property of the district, and each class electing one third of the representatives or officials, to which the district was entitled. Since a comparatively small number of wealthy men composed the first class, a somewhat larger number of well-to-do the second, and the great majority of the citizens, the third, a very small number actually elected one third of the officials and minority, usually controlled two third. In Belgium, some such method was practised until 1913.

WHAT IS REPRESENTED IN REPRESENTATION ?

We may now turn to examine the problem of the role of the representative in the political life of the electorate. There may be all kinds of representatives, honest or dishonest, intelligent or stupid, patriot or subversive, energetic or lazy, learned or ignorant. Their jobs may be complicated or simple and their elections may have been fair or fraudulent. Notwithstanding these generalities, there are at least four different types of concepts of what a representative should be—(a) the Mirror type, (b) the Chameleon type, (c) the Statesman type, and (d) the Party Member type. The Mirror type of representatives reflect the population and are like the people they represent. There should be rich and poor, farmers and urbanities, lawyers and merchants, landlords and tenants in every representative assembly and they should be there in proportion to their relation to the population of the state. Thus, if one-third of the population is agricultural, then, approximately, one-third of the legislative body should be farmers. As Jennings put it, there should be Tom, Dick, and Harry in any Parliament, for Tom, Dick and Harry, *i.e.* common people representing other common people, will tell the government what it cannot do and what the people will not stand. When representatives of this sort arrive at consensus, it is suggested, they have done precisely the same thing that the entire body politic would have done if it could have been brought together.

The Chameleon type of representative is merely a delegate of those who elected him. He does the bidding of the constituents, phrasing the sentiments of the folks back home. When their sentiments change, he adapts his course accordingly. He exercises little independent judgment except in the process of trying to discern what his constituents want. His wishes are merely those of his constituents. In France and America, people want their representatives to act as their delegates. Now, the wisdom of this attitude is highly debatable in view of the growing complexity of modern government. While a constituency is entitled to the fullest expression, through its representative, he is after all, not the servant of the party in majority in his constituency. He is elected to do the best he can, in the light of his intelligence and conscience. As Laski has put it, "if he were merely a delegate, instructed by a local caucus, he would cease to have either morals or personality. If he changes his colour as the Chameleon to fit the place where he stands, he would be acting as though he has neither brains nor character." The most that the constituency can reasonably expect of him is that he be "decently consistent in opinion, and reasonably diligent in the performance of his duty."

Given this, the representative must be the Statesman type, the classic definition of which was given by Edmund Burke : "Your representative owes you not his industry only, but his judgment; and he betrays instead of serving you, if he sacrifices it to your opinion". This is the English view and we believe the correct view. We, in India, have accepted it, and I think rightly. Since, here, the member of Parliament is not required by either law or custom to reside in the constituency, from which he seeks election, he is more free from local control than the French Deputy, or the American representative in the Congress, both of whom are required by custom rather than by law to reside in the district which they represent. "The Statesman type of representative uses his best judgment upon the issues he is called upon to decide and while he is interested in the views of his constituents, he is also interested in other views. He is not his Master's Voice and he looks at views and news from the national point of view. He does it because he is better placed than his constituents, who are not well enough informed about governmental problems to make decisions which involve undertsanding of very complex issues. Thus, you find the best man whom you can trust and then depend upon him to use his own judgment about what is best. The intermediate position is usually the best in politics and in this context the intermediate position is that the representative should be neither supine nor officious towards his constituents and that he should try to protect and advance legitimate local interests so far as these are compatible with the national welfare, a compatibility of which he should be the judge.

But, then, can he be the sole judge ? Is his conscience or judgment independent of the conscience or judgment of the party, of which he is a member and which has given thim the ticket on which

he fought the election? Has not the development of political parties and the increasingly firm discipline exerted by them upon him tended to substitute accountability to the party for accountability to the local voters? Where is the "independence" of the elected representative? Even if he has the requisite ability and integrity (this is very doubtful, for the tradition of the governing class is fast declining in India as well as in England), he cannot have independence. Thus, the most common type of representative today is the Party Member type who lives up to his party label in the legislature. He needs the party; the party needs him. And so, his tail goes up or down as the party whip commands. The justification of this is that the political party is the only real vehicle for the accomplishment of political programmes and that without party solidarity nothing could be accomplished in a legislative assembly. The unit in the election is not so much the individual as the party and the voter in voting for me is voting for the party of which I am a member. And, if the party has financed my elections even partially, and has serviced the fight, and if I have accepted the party programme on the basis of which I am appealing to the voter for support, fairness demands that once elected, I must not make a fetish of my independent judgment and support the party through thick and thin. There may be moments when I do not agree with the party view-point, but in such cases, I must resign my seat and fulfil my unwritten contract with the party, the voter, and my own conscience.

This, roughly, is our answer to the question, what is represented in representation. A representative cannot disclaim accountability to the constituency, the party, the nation and to his conscience. It may be that responsibility to these four masters may create a terrible conflict of loyalties. But the best in such a situation is that you attempt a right ordering of your several loyalties and the supreme loyalty in our view is to the conscience. A representative must represent his inner voice. It must be realized that there is a place for leadership and specialized knowledge, in democracy as in other states. The ruler's job is not to follow opinion; it is to use his authority in support of proposals put forward by people who know what they are talking about. Electors in a democracy decide what is to be done only in the sense that they choose themselves leaders and representatives whose initiatives they are prepared to accept. Where democratic institutions differ from others in that legal authority depends directly on the confidence of the electors, and elections are periodic tests to make it so. If leaders do not lead and the representatives cease to represent their elector, through their reasoned judgment but prefer to play for easy popularity, democratic government degenerates into mob rule. There is nothing undemocratic about a government adopting or a representative advocating unpopular policies. Their concern should be not whether a policy is popular but whether it is rationally justifiable. A representative must hope that his moral stature and good reputation are enough

to maintain support and that experience will vindicate him.

POWERS OF THE ELECTORATE

In a modern democratic state, the electorate is the political sovereign. The constitution embodies its will and the government is formed and run by its mandate. It is mainly responsible for exercising an effective control and democratic supervision over the government, which has to function in accordance with the constitution. The constitution itself may be amended, if a sizeable section of the electorate so demand. Its control over the administration as well as law-making assembly is continuous. Through representation and election, an intimate touch between the electorate and the government is established, and this contact is reinforced by the principle of Local Self-Government. Frequent elections and by-elections reflect the change in the moods of the people and give a clear indication to the government of what the electorate desires. Much, of course, would depend upon the democratic character of the elections. The voting is not only to be secret, but the elections must be so arranged that the average man should not have to face insurmountable difficulties to exercise his franchise. The polling booths are to be located to ensure convenience of the voters; the elections must be held either on a Sunday or on days, which must be declared public holidays, as in India. In most of the European countries today, elections are usually held on Sunday. Provision must also be made for postal ballot. The voters must be encouraged, if not actually compelled, to exercise their right to vote. In Australia, the right to vote has actually become a legal duty, for, not exercising this right is penalized by fine. In many countries, the electorate has the power to choose the officials and even to nominate the candidates. In the United States, the nominating process is quite significant, inasmuch as it affords a preliminary contest for office holding, which, because of local circumstances, may be the actual decision. The direct primary was adopted as a method for choosing candidates, which would give the electorate the greatest possible power and which would eliminate Boss Rule. In an open Primary in the United States, the voter may cast his ballot in whichever party contest he chooses. In the closed Primary the voter may participate in the contest only of that party, of which he is a registered member.

Selecting officials is another important power of the electorate. Sometimes the ballotting is public, and sometimes candidates of each party are arranged in vertical columns and at the top of each column is a party circle, enabling the voter to cast his ballot for all candidates of the party with a single mark. In some cases, the electorate has even the power of recalling those officials who have not conducted themselves well. To initiate a recall election, petitions may be signed by a requisite number of voters and at the following election, the voters have to choose between the present incumbent and some other person deemed fit to succeed him.

If the office holder secures a larger number of votes, he is permitted to complete his term, otherwise he is recalled.

Equally important power of the electorate, is in the sphere of law making. In 5 Swiss Cantons they have direct legislation. Every year, on a Sunday in spring, all enfranchised men in the canton assemble at some historical spot to elect their governors and make their laws. Every citizen is obliged to attend this meeting of the Landsgemeinde. In case of urgent business the Landsgemeinde can be summoned at other times in the year also. In these meetings, the Landammann, *i.e.* the President of the Cantonal Government conducts proceedings in a loud voice. The citizens proclaim their will by show of hands. Huber, writing about these meetings, has said ; "It is a great experience both to watch and to listen. There is deep and [illegible] the proceedings. Even [illegible] or in a field at the foot [illegible] the whole atmosphere." It is this sort of direct democracy which prompted Rousseau to talk about his general will. But the emergence of large states and the growing complexity of political questions has largely eliminated this type of Town Meeting, although, modern methods of communication have tended to remove some of the obstruction to direct democracy with the result that in some states government by the people seems to have revived. Sometimes, in order to obtain popular verdict on a matter of public importance, a plebiscite is held. Its result may not have legal force, but is a sure guide to the government. This method is used with success in Switzerland. Then, again, there is the device of referendum, which is a process by which the verdict of the people is sought on a proposed law or a constitutional amendment, on which the legislators have already expressed their opinion. If it is approved by the majority of the people voting, then, *ipso facto* it becomes law. If it is rejected, the measure is given up, the underlying concept being that a law must be the manifestation of the will of the people. Thus, referendum is the veto power of the people. In Switzerland, with regard to constitutional revision, it is compulsory, but with regard to ordinary legislative revision, it is optional. In the optional form it exists (on the initiative of 30 thousand citizens or 8 cantons) for all laws and resolutions that have general application, unless the assembly declares the matter urgent. All International treaties concluded for an indefinite period or for more than 15 years, must be submitted for the acceptance or rejection by the people upon a demand of 30 thousand citizens or 8 Cantons. This is so far as the Centre is concerned. In the Cantons, referendum is obligatory for all amendments to the Cantonal Constitutions. As regards legislation passed by the Cantonal legislature, the referendum is obligatory in 8 cantons, whereas it is optional or facultative in 7 cantons. In these latter cantons, a prescribed number of citizens, varying from canton to canton, can demand its application.

If the referendum is a remedy against the legislaure's sins of

Commission, initiative is a remedy against the legislature's sins of omission. The former has a purely negative effect inasmuch as it merely enables the people to reject measures passed by their representatives. The initiative by which a given number of voters may, by petition, originate a law, has a definite positive effect. It is not a mere popular submission made to the legislature, on which the legislator may or may not act, but, it is a vindication of the ultimate sovereign power of the people, for it takes effect without regard to the opinion of the legislature, and even against its wishes. If referendum is the shield of the electorate, initiative is its sword, for it enables the electorate to secure the passage of laws desired by the majority. In Switzerland, the initiative takes two forms, formulative and general. When the demand is couched in general terms, it is the function of the legislature to draft, consider and pass the laws, as required by the number of citizens, subject to the ratification of the people. If the proposal is in the form of a bill it is the duty of the legislature to consider a measure as it is. Such a procedure is known as the Formulative Initiative. In Switzerland, 50 thousand Swiss citizens can initiate proposals for a complete revision of the constitution. Popular Initiative has also been broadened to include proposal for partial revision of the constitution. So far as the cantons are concerned, initiative is used both for changes in the Cantonal Constitution and the ordinary law. A total revision of the Swiss Constitution can be demanded by 50 thousand citizens and if it is accepted by a majority of the people, the two Houses of the National Assembly are then re-elected for the purpose of preparing the revision, which is then submitted for the approval of the people and the Cantons. This procedure is similar to that followed when one House of the Assembly proposes a complete revision and the other House opposes it. In case of partial revision any 50 thousand voters can propose an amendment, which may either be expressed in general terms, or presented in the final form of a bill. If the proposal is couched in general terms and the assembly approves of it, it immediately proceeds to draw up the amendment, which is then put to a popular vote and decided. If the assembly does not approve of it, the question is referred to the people, whether or not the initiative proposal will be proceeded with. If the popular vote supports it, it is the duty of the Assembly to put the amendment in form and submit it to the verdict of the People and the Cantons. In case the initiative is formulated in specific terms and the assembly approves of it, the proposal is put to popular and Cantonal vote. If the assembly disapproves, it may submit its own counter-proposals to the referendum of the people and the cantons, along with the proposals which have been popularly initiated. In the Cantons, a specific number of citizens, the number varying from canton to canton may either demand total revision of the constitution, or ask for particular amendment to it. In the cantons, initiative is also available for ordinary laws. On the whole, the devices of direct democracy

have been used with a great success and effect in Switzerland. Referendum is the surest method of discovering the real contents of public opinion and is its excellent barometer. It minimizes the importance of political parties and tends to discourage factional spirit. It constitutes a brake on the caprices and whims of the legislature and the vagaries of the political machine. It prevents political parties from being high-handed and it puts political questions straight in the hands of the electorate. It stimulates people's patriotism and their sense of responsibility. It gives them political education. It prevents dead-locks between the two houses of the Legislature—houses, which are co-equal in powers. It puts an end to all controversies, for it gives the power of final solution to the sovereign electorate. The initiative supplements and complements referendum and when the legislature fails to make provision for a need which people acutely feel, they can, through initiative, suggest it to the erring legislature. In short, referendum and initiative result in a clear analysis of issues which are placed before the public concretely. In Switzerland, every advancement in constitutional law done to the present has been made not only by lawyers and statesmen, but with the expressed consent of the voting inhabitants.

But, this is only the bright side of the moon. There are clear disadvantages also, which must be taken into account. Referendum and initiative tend to undermine the prest[illegible] of the legis- [illegible] efforts may be reversed by their masters. The legislature may even pass measures against its better judgment counting on the people to reject them and conversely, it may fear to pass laws, which it thinks, are needed, lest it should receive snubbing from the people. These devices transfer responsibility of law-making from the qualified hands of the legislature to the unqualified hands of the crowd. After all, people cannot fulfil functions of the legislature; indeed they are hardly qualified to do it. Moreover, a simple 'yes' or 'no' can hardly indicate a balanced judgment on any bill. The making of laws is a technical, complicated business, and requires a good deal of special training and experience. In most of the referenda, the votes actually cast have been less than 50 per cent of the electorate, which means that legislation by the initiative or its rejection by the referendum, is really the outcome of the dominance of the minority over the majority of the electorate. When referendum is frequently resorted to, people develop some sort of electoral fatigue. Finally, referendum, sometimes involve unnecessary and harmful delay in passing many laws of urgent national importance. It may also be pointed out that direct legislation is also found in the "N[illegible] in the U. S. A., where the voters in [illegible] cials, vote taxes and decide question[illegible], in the United States, there is no n[illegible] in the states, a number of

questions can be referred to popular vote. The initiative is also used in some of the states, and in some, petition is made to the legislature to request action on matters of interest to the voters.

Another function of the electorate can be said to be judicial and it is exercised by means of the Jury service. But more important is the policy endorsing function. Even in Hitler's Germany, *the Dictator used to submit his policy decisions to the electorate* for approval which, of course, was readily given. In democratic states changes in policies can be brought about by strong public opinion. Finally, the electorate in many states, enjoys constituent powers. For example, in most states of the United States new constitution or constitutional amendments are submitted to referendum. We have already considered the example of Switzerland. In the Constitution of the Fifth Republic of France, it is provided that the government or parliamentary bill for amendment of the constitution, must be passed by the two assemblies in identical terms and that the amendment shall become definitive after approval by the referendum.

PUBLIC OPINION

It must have become obvious to the reader that the main instrument of the electorate is public opinion, on which, really speaking, democratic government rests. Public opinion is relatively a homogeneous expression of preference by members of a group or a set of groups, concerning controversial questions. Public opinion is given its meaning with reference to a multi-individual situation, in which individuals are expressing themselves or can be called upon to express themselves, as favouring or supporting or disfavouring or opposing some definite condition, person, or proposal of great public importance, in such a proportion of number, intensity and constancy, as to give rise to the probability of effecting action directly or indirectly toward the object concerned. It is not just what people think nor even that part of their thinking, which they express in public; it is what they want to be made effective in practice. There are many things that people like and dislike, but what matters in politics is what they like enough to demand and what they dislike enough to resist. Public opinion must be precise enough to be translatable in actual measures and policies, to be or not to be adopted by a government, depending on popular support. Original public opinion is the opinion of a minority. But, when through dissemination or propaganda in press, through books, public meetings, radios, cinema, advertisements, the opinion gets round the community, a large number of people, who are really unthinking mass get to accept this opinion. On this showing, public opinion is negative and is based on inertia, indifference, lack of information and ignorance. These observations are obviously relative, for, much would depend upon the general level of education, intelligence, honesty and understanding of the opinion-forming groups or

leaders. But everybody knows that appeal is easier made to prejudice than to reason. Public opinion may raise an ordinary person to the heavens today; it may raze him to the dust tomorrow. There may be no reason for the former and no rhyme in the latter. The concept of public opinion is really based on several myths and vague assumptions. For example, it is assumed that the public is interested in public policy, that the public is well informed, that it would rationally discuss and reach rational conclusions; that rationally conceived opinions would be held uniformly throughout the society, that having reached a conclusion the public will express its will through the ballot;that the will of the people would be incorporated into the law. Now, all these assumptions may or may not be valid, indeed, in most of the cases, they are not valid. And yet we take them for granted and become victims of illusion. In the first place, it is difficult to say whether an opinion is really shared by the public or not, in the second place, it is still more difficult to devise a machine which can measure and accurately record the opinions, presumably held by the public. On the one hand, the term "public" is vague, on the other, the term "opinion" is hazy The former may mean the citizens, the aliens, the majority, the educated minority, the articulate minority, the passive electorate, the active voters, the indisciplined mob, a rabble of clerks, a crowd of workers, a coterie of Professors and so on. On the other hand, 'opinion" may be rational, irrational, may be based on facts or fiction, may be held intensely, or may be entertained for the sake of expediency. That is why public opinion is not easy to define. In its common use, it refers to the composite reaction of the general public, but as a rule, the only tangible evidence of those tendencies is to be found in the opinion of the more influential leaders. These leaders may be Reactionaries, Conservatives, Liberals or Radicals. It may be argued that in many cases, the opinions of an individual are derived from memory, imagination, prejudice, an emotion, and fragmentary information of the environment in which he is living. An opinion based on this material can hardly be objective. The question becomes more complicated when we bear in mind that the intellectual capacity of one individual will differ from that of another and for the common man it becomes difficult to form an intelligent opinion on involved questions of law, budget, foreign affairs and international trade.

In fact, a public is several publics and contains diverse groups. Of these groups, some are more active than others. In the realm of political dynamics, that segment of the public will count which can make its influence felt in the different stages of the political process. When we examine the contents of public opinion, the issue becomes still more difficult. Opinions and attitudes are moulded by the atmosphere of the home and the family, the church and the religion, the school and education. The likes and dislikes are developed in the family; attitudes are formed in the neighbourhood and in the Church; and ideas are formulated in the

schools and Universities. By the time a person comes to the University, he brings along with him a definite pattern of culture. If, in the University, the teacher and the curriculum fit in with this cultural pattern, the response will be satisfactory. If not, the results may be unprofitable. Much would depend upon the valued judgment of those who actually formulate the syllabii. It all depends on the pattern of life for which the Universities attempt to prepare the students. Just as there are superstitions in the home, there may be superstitions in the Universities also; there may be taboos in the family and there may be shibboleths in the class room. There may be a teacher who is there only to pass his time; and there may be others who bring a burning zeal to bear on their job. There may be teachers who constantly hearken back and eulogise the good old days; there may be others, who are forward-looking and have faith in the future. These are fundamental questions, and conviction, faith, and opinions and attitudes will be influenced by the answers we give them. In the same fashion, religion has a tremendous impact—positive or negative, on attitudes and beliefs. Capitalism may be supported by one religion; the whole world may stand discredited in the eye of the other. Our ethical values emanate from our religious convictions, and our ethical codes form the basis of our civil and criminal law.

Then, there is the problem of the behaviour of public opinion. According to some people, man is consistently rational, in thought as well as in behaviour; according to others, he is largely prompted by emotions, and at any rate, his behaviour is the outcome of a combination of rational and irrational factors. The latter view is definitely more objective, for, in fact, opinions are inconsistent, unstable and even mutually contradictory. I may vote today for the Congress and tomorrow for the Jan Sangh. I may vote for the Jan Sangh, my wife may vote for the Congress. Opinions may be expressed which bear no relationship with the thought process within. At a particular time, I may behave as a man behaves: whom I adore and in so behaving, I am not my true self. In this case I have really identified myself, although temporarily, with my Hero. A little later, I may assume my true self and my behaviour becomes basically different. In some cases, our behaviour becomes peculiar, because we try to project our own weaknesses and faults into others and attribute emotions to them, [illegible] itical leaders do this sort of [illegible] a common ground of mut[illegible] ial ambition is thwarted, my behaviour becomes [illegible], and I may cultivate a strong desire for political power. If your love for an object is frustrated, you may apparently shift it to another object or situation, in order to attain satisfaction. You may have made [illegible]

[illegible]

of an individual in society. Since the behaviour is so complex,

the opinion, which is organically related to it, will be equally complex. Then, again [illegible] use, have acquired [illegible] different circles. F[illegible] tatorship", "Sociali[illegible] "Trade Unions", "Leader" are discussed, cartooned, admired and condemned in such a manner that peculiar set of meaning immediately comes to the mind, when we speak of them or hear them, and without any further thought, we accept them or reject them. In such a situation, what will be the meaning of public opinion, is left to the reader's guess.

HOW IS PUBLIC OPINION FORMED?

In the beginning, there may be an obvious discontent with some public policy or action in some area, which may lead to group action. The discontent may be spontaneous, or it may be organized by politicians. Discontent breeds controversy and controversy leads to discussion, which tends to spread. The speakers and the writers will then join issues; groups and societies will stand up and fall in line; issues will be dramatized; investigations will be demanded and will be made; one section will ask for the change in the name of progress; the other section will clamour for the status quo in the name of stability. Gradually, new dimensions will be added, more heat will be injected and the controversy will take the form of a propaganda campaign; the line of demarcation will be clearly defined; facts will be bartered for fancy, truth for legend and reason for emotion. When the climax is reached, opinions will be expressed through election or a policy decision or a formal legislative enactment. Thus, the caravan goes on and the myth is built up with its garment made out of public opinion. If someone wishes to ascertain what public opinion is, one will have to go to the rumours, speeches at public meetings, press, radio, movies, books, magazines and journals, and advertisements. Through these agencies, knowledge or ignorance, both can be propagated; information or mis-information, both can be disseminated. And, since, most of the means of propaganda and publicity are controlled by business magnates and their companies, they use them for their own personal interest, or for their class interest. The newspapers have really become the views-papers, for they distort and even suppress the news. The Editor is really dead, and when you read an editorial, it is really not so much the brains of the man who is supposed to have written it which comes out, as it is the long handle of the press baron who finances the concern. In India, for example, the study of public opinion pattern concerning Mr. Krishna Menon, makes an interesting study. The entire business press attacked him personally more than his policies, and when People's China decided to attack India in a most callous manner, the press did not so much demand action against China as they cried for the blood of Mr. Krishna Menon. His policies had hit the business since 1957;

he was the advocate of the public sector in the Defence Industries; he was the ardent champion of the underdog; he was an able parliamentarian; he was the bestseller abroad of Mr. Nehru's policies of non-alignment and welfare state. The business press, however, raised a hue and cry against his socialistic policies and even though he had won the election in 1962 with a thundering majority, it [illegible] unpatriotic impulses, selfish and exploitative instincts. This example illustrates that sometimes a small segment of the electorate, which controls means of propaganda, can successfully hoodwink the rest.

THE IMPACT OF PUBLIC OPINION

It is quite obvious, then, that public opinion today, has become increasingly important. Contemporary politics are vitally dependent on the opinion of large masses of more or less politically conscious people, of whom the most vocal, the most influential and the most accessible to propaganda are those who live in and around great cities. The wide extension of the franchise during the 20th century has made it essential for government to win the support of public opinion for their foreign as well as the domestic policies. The rising tide of literacy due to the steady growth of public education gives an opportunity to explain their policies to large masses of politically conscious people and to permit their acceptance. In times of war, states have to depend on large armies and widespread civilian participation in war work and this necessitates constant mobilization of public opinion and morale for the most effective prosecution of the war effort. The growing concentration of peoples in urban areas has created a group, particularly available to mass appeal propaganda. In countries where there are populations with diverse racial background, propaganda can become a useful means of welding peoples together. Technological developments and means of communication and transport have enhanced the effectiveness with which opinions can be disseminated. The build-up of large newspaper circles, the development of the radio, the motion picture and the television have all contributed to this. In foreign policy as well as in domestic policy public opinion plays a significant role. It explains the fact that one of the first steps usually taken by a Dictator upon seizure of power is the taking over of the press and the radio. The press carries news and views through the printed word; the radio through the spoken word. Weekly news-reels afford governments and special interest groups that are clever in preparing staging or directing the newsreel photographers an excellent opportunity of putting across a message or selecting facts to millions of people at home and abroad. Through the weekly Press Conferences the Heads of Governments reach the nation and the world. The present age is particularly the

age of ideologies. To say that is to emphasize the importance of public opinion. Every modern government today, maintains a full-fledged Ministry of Information and propaganda, in order to cultivate public opinion on which their policies may rest. Policies, which are not backed up by propaganda and public opinion invariably fail. If a policy is the gunmount and the missile, propaganda is the propelling explosive element of the nation's foreign programme. Modern embassies maintain libraries and operate educational exchange programmes with a view to selling their policies to world public opinion. In the same proportions, censorship and restrictions on the gathering and publishing of news have increased; foreign correspondents are expelled, and barriers to the free flow of information are raised. Just as there is commercial advertisement to popularize commercial goods irrespective of their inherent merits, similarly, there is propaganda at the government level in order to publicize policies and programmes irrespective of their essential goodness.

Public opinion not only influences policies of the government, it also has its impact on the law-making process. Entire legislative programme, on which parties contest elections is inspired by public opinion. At a certain stage, laws have to be modified with a view to giving concessions to public opinion. Even the decisions of the law courts bear the hallmark of public opinion. After all the Judges are human beings, living in society; they are part of the social environment; they reflect reactions of society; they have to respond to social vibrations. No law can be conceived in a vacuum; no [illegible] irations; and no Judge can rem[illegible] s. Even the process of the form[illegible] by the pulls and pushes of public opinion. Ministers are included because of it: they can be excluded because of it. As long as democracy remains the best form of government, with all its failures and blemishes, public opinion and propaganda will continue to play a vital role. That is the glory of democracy; it is its life and its breath; it can be both its strength as well as its weakness.

ELECTORAL SYSTEMS IN DIFFERENT COUNTRIES : THE U. S. A.

Earlier, in this Chapter, we have referred to the electoral methods recognised by political science. We may now say a word about the electoral systems as we find them in different modern states. In the United States, about 65% of the entire population has a right to participate in the electoral process. The House of Representatives is elected every two years with a total membership of 435, and one third of the Senate, now numbering 100, is elected simultaneously. Both the Houses are elected directly. The representatives must be citizens of seven years' standing, be 25 years of age, and their term is two years. The Senators must be 30 years old, be citizens of nine years' standing and they have a six-year term. They must be residents of their

particular states at the time of elections. There can be no disenfranchisement on grounds of race, colour or sex. While the representatives are elected on the basis of population, the Senators are elected on the basis of two from each state. The President is elected every four years by an Electoral College, chosen by popular election. The Electoral College consists of a group in each state equal to the number of Senators and representatives to which that state is entitled in the Congress. The electors in each state vote for President and Vice-President. These votes are then counted by joint session of both the houses on January 3. An absolute majority is necessary for the winning candidate, failing which the House of Representatives votes for the President and the Senate for the Vice-President. The President is inaugurated on Jan. 20. It must be emphasized that today the Presidential electors are strict by party men and are pledged beforehand to support the party candidates. They are, therefore, not free in casting their votes. The continued widening of the franchise has strengthened the view of the Presidency as the repository of the people's will. The members of the House of Representatives are chosen by Single-Member Districts, boundaries of which can be revised on the basis of decennial census. This sometimes gives rise to what is called as Gerrymendering. The time, place, and manner of holding elections for senators and representatives are prescribed in each state by the Legislature, subject to the limitations which the Congress can impose. Among the voting pre-requisites are included citizenship, 21 years of voting age, six months to two years of residence, entry in the voting register, literacy test (in 17 states), poll tax (in 7 states). One of the important aspects of the American electoral process is the Party Convention Method of nominating candidates for the Presidency. The candidate who gains the party nomination is obliged to indulge in House-trading with various state delegations with a view to securing their support and thus in many cases goes against the promises made to the electorate. For the elections of the Representatives and the Senators, the nomination procedure for party candidates is also not very fair. Too important a role is assigned to the party bosses.

BRITISH ELECTORAL SYSTEM

In Britain, for electoral purposes, the country is divided into Single-Member Constituencies. In order that the people shall be equitably [illegible] Permanent Boundary Commissions for England, [illegible] n Ireland, keep constituencies con[illegible] have already noted. The law, relat[illegible] is found in three consolidating statutes, the most [illegible] which is "The Representation of the People's Act, 1949", which repeals and re-enacts in a single statute previous legislation relating to the franchise, the conduct of elections and corrupt and illegal practice. The other acts are "The House of Commons Redistribution of Seats Act

of 1949" and the "Election Commissioners Act of 1949". Under these laws, election to the House of Commons is decided by secret ballots in which all U. K. citizens (except members of the House of Lords) and all citizens of the Commonwealth and of Ireland, who are residents in the U. K. are entitled to vote, provided that they are 21 years old or over, and unless they secure any legal incapacity to vote. A register, containing the names of all electors is prepared and published yearly by Registration Officers, who, in England and Wales, are usually the clerks of local Councils, and in Scotland, are

electors normally vote in

established for the purpose,

Crown servants overseas and their wives may vote by proxy. Voting by post, or in certain cases by proxy, may also be allowed if the voter cannot attend in person for such reasons as illness or nature of his work. All entitled to vote, may stand for election, except undischarged bankrupts, clergymen of the established Churches of England and Scotland, of the Church of Ireland and of the Roman Catholic church, and such persons as are disqualified under the "Disqualification Act of 1947". The elections are held with a great speed and at the same time throughout the

Commons, or when the five-year life of the Parliament is ap-

must deposit 150 pounds in cash in order to ensure that he is a serious candidate. In England, there are no direct Primaries. A

80-90% of the electorate have actually been voting. According to the prevailing system of education, the candidate, who obtains the highest votes, is elected. Nine days after the nominations are made, the balloting commences. In all, the campaign elections last three weeks. There is wide travelling on the part of the candidates in the constituency, although the burden for each constituency election is carried by the Local Party Organization. A very important role is played by the candidate's agent, who not only directs the election battle, but is also responsible for disbursing money. There are stringent laws, which limit the election expenses for each candidate to a sum of 450 pounds plus two pence per registered voter in County Constituencies and 1½ pence per voter in Borough Constituencies. The Simple Majority Vote

System has created quite a few problems in the U. K. For example political parties are not represented in the Parliament in proportion to the votes they poll. Even the opinion of the Nation may be distorted inasmuch as a party may obtain a higher percentage of the poll than the other, but it may have fewer seats in the Legislature. In the 1951 election, the Labour Party obtained a higher percentage of the poll than the Conservative Party, but it got fewer seats than the Conservatives. Again, the seats may be won on a minority vote, and an elector favouring a small party or one without the candidate, may either not exercise his vote, or be obliged to vote for the least objectionable candidate. Moreover, a relatively small change in the electoral opinion may produce a far greater change in the distribution of seats. In 1955 elections 43 seats were won with majorities of under 1000 votes, while the margin of victory in 60 constituencies was less than 300 votes. Finally, under the present system, the labour party is definitely at a disadvantage, because its massive majorities in the industrial areas are wasted. It is for this reason that some people have suggested that England must go to Proportional Representation. But both the leading parties in U.K. are opposed to it for reasons into which it is needless to go in this chapter.

ELECTORAL SYSTEM IN FRANCE

In the Fifth Republic, the legislature is bicameral, the lower and popular house being the National Assembly and the Upper House being styled again as the Senate. There exists in the constitution the President's power of dissolution. It is also provided in the Constitution that General Elections shall take place 20 days at the least and forty days at the most after the dissolution. The National Assembly is to convene by right on the second Thursday following its election. If this meeting takes place between the periods provided for ordinary sessions, a session shall, by right, be opened for a 15-day period. It is specifically laid down in Art. 12 that there may be no further dissolution within a year following these elections. While the deputies to the National Assembly are elected by direct suffrage, the Senate is to be constituted on the basis of indirect suffrage so as to ensure the representation of the territorial units of the Republic, and of the Frenchmen living outside France. Under Article 25, "an organic law shall determine the term for which each Assembly is elected,
conditions of
npatibilities.
, in the case

Now, in pursuance to this Article, an organic law was pomulgated in October, 1958, under which each person in voting for a member of the Parliament voted for a substitute. Under this, if the deputy or senator is nominated to the government he is re-

placed by his substitute for the remainder of the duration of the Assembly or of the Senatorial mandate as the case may be. The number of members of the National Assembly elected in November 1958 was reduced from 544 to 465 and the electoral system adopted was the 2-ballot majority system in single-member constituencies. Under this system, at the first ballot only candidates who obtain an overall majority are elected and the second ballot is based on the British system of simple majority. A complicated system of withdrawals operated between the first and the second ballot. The system was alleged to favour centre parties against extremes, because, at the second ballot, the general attitude of the electors would be to defeat the other extreme by supporting moderate candidates. As far as the distribution of seats was concerned, there remained large discrepancies in the size of constituencies, which were supposed to include an average of 93,000 inhabitants Some observers also thought that the shape of constituencies led to a sort of gerrymendering. On the one hand, many towns were divided into 2 or more constituencies and linked with large portions of the country-side. On the other, some constituencies were made surprisingly long and thin. It was also alleged that General de Gaulle himself redrafted the boundaries because they had been deliberately designed against M. Mendes-France and M. Millerand. In all, 2997 candidates were nominated for 465 constituencies and eventually 2850 contested. Partly as a result of the organic law of October 1958, to which we referred above a peculiar system of party alliances sprang up. The new constitution preventing Ministers from being members of the Parliament, it was decided that it might be better to avoid bye-elections which might appear as a vote of confidence or no confidence in the country and to make a candidate, at the time of the election, to choose a substitute who would be elected at the same time as himself. The result was to transform the single-member system into a 2-member system, and many candidates sought to take advantage of this provision. The idea was to create a team and [illegible] her by choos- [illegible] more often, by [illegible] another part of the constituency. Sometimes, the system was used in order to consolidate party alliances; the U. N. R. official list of candidates mentions three constituencies where only the substitute is endorsed by the party but there were many other instances of the same nature.

The following table of election results in 1958 will give the reader some idea of political trends in the early phase of the Fifth Republic :—See page 269.

In this light it is easy to draw some conclusions. From the point of view of the elector, the Election was both the simplest and the most confusing in living memory. It was simple, because, apart from a few prominent personalities, who had voted 'No' at the referendum—M. Mendes-France, Mitterand, and Bour-

Parties	Seats captured 1958	Seats in 1956	Votes 1st ballot 1958	Votes 2nd ballot 1958	%1st ballot 1958	%2nd ballot 1958	Votes in 1956	% votes in 1956
Communists ...	10	145	3882204	...	18.9	20.7	5532631	25,7
Left ...	2	4	347298	...	1.4	.	449472	2.0
Socialists ...	40	88	3167354	...	15.5	13.8	3180656	14.9
Radicals ...	13	36	983201	...	4.8	2.0	2876398	13.6
Left Centre ...	22	18	1364788	...	6.7	5.8	...	
M.R.P. & C.D.	57	71	2378788	...	11.6	7.6	2374221	11.4
U.N.R.(including Gaullists) ...	188	16	3603958	...	17.6	26.4	948854	4.6
Moderates (independents) ...	132	95	4092600	...	19.9	23.7	3086414	14.6
Extreme Right ... (including Panjadists)	1	51	669518	...	3.3	...	2816805	13.2
TOTAL	465	544						

ges-Maunoury, for instance—and from the small 'autonomous' socialist splinter group, formed after the party's annual conference in September and also representing 'Noes', all non-Communist parties and candidates were supporting General de Gaulle. There was, in fact, no positive alternative to Gaullism. On the other hand, never had parties been more divided. Radicals and M. R. P. were divided, as well as the socialists. The orthodox conservatives had, as usual, a number of opponents standing either as independent conservatives or under some more or less ephemeral label; and relations between right-wing candidates and Gaullist U. N. R. candidates varied from constituency to constituency. Since all candidates were for de Gaulle, and except on the question of Algeria, none had any clear programme, it might be thought that it did not much matter which of them the elector voted for. If he did want to choose, however, the diversions were extremely confusing.

The Elections, on the whole, constituted a triumph for de Gaulle. The Communist Party was literally routed as is clear from the table above and its representation fell from 145 in 1956 to 10, and its votes fell from about 25% to about 19%. The loss of the Communists did not become the gain of the Socialists. The gainer was the Right and, in fact, the electors voted for right-wing candidates in far greater numbers than at any election since the war.

The elections that were held in November, 1962 brought about a unification of Left-wing forces for the first time in 15 years. For the first time in the post-war history, one single group (the Gaullist U. N. R. Party) has achieved absolute majority. The Communist Party's votes increased from 19% in 1958 to 22% in 1962. " :y captured 41 seats in the new Assembly, the Socia-

lists got 65, the Radicals got 44, the Gaullists 230, the Independents got 47, Popular Republicans got 38, other extreme Right-wing groups got nil and those without label got 4. The Communist Party alone secured more than 1/5th of the total votes polled. The 3-Left Wing parties have polled together nearly half of the total votes cast, but they have secured less than 1/3rd of the total seats. In proportion of votes, the Communist Party in France should have had today, well over 100 seats.

The method of election of the President is dealt with in Articles 6-7 of the Constitution. He is elected for a term of 7 years by an electoral college, comprising of the members of the Parliament, of the General Councils, and of the Assemblies of the overseas Territories, as well as the elected representatives of the Municipal Councils. These representatives and (a) the mayor for the communes of fewer than 1000 inhabitants, (b) the mayor and the first deputy mayor, for communes of from 1000 to 2000 inhabitants, (c) the mayor the first deputy mayor, and a municipal councillor chosen according to the order of appearance on the Council list for communes of from 2001 to 2500 inhabitants (d) the mayor, the two first deputy mayors for communes of from 2501 to 3000 inhabitants, (e) the mayor, and the two first deputy mayors and three municipal Councillors chosen according to the order of appearance on the Council list for communes of from 3001 to 6000 inhabitants, (f) the mayor, the two first deputy mayors and six municipal councillors chosen according to the order of appearance on the council list for communes of from 6001 to 9000 inhabitants, (g) all the municipal councillors for communes of more than 9000 inhabitants. Finally it must be pointed out that the first draft of the constitution had aroused considerable criticisms, for, as in the case of the former Senate, it gave small rural districts no electoral weight proportionately much greater than that of large towns. One might have questioned the representative value of this electoral college, and deemed too weak the part played by the nation in the designation of the head of the executive elected like a sort of super senator. But in the final text, the disequilibrium caused by the fact that in France, the communes of fewer than 1000 inhabitants, each possessing a presidential elector (their mayor) formed a great majority, was largely corrected by a clause which provided that "for communes of more than 30,000 inhabitants, delegates to the electoral college were to be appointed by the municipal council, at the rate of 1 for every 1000 inhabitants over 30,000." In the Overseas Territories of the Republic, the elected representatives of the Councils of the administrative units also form part of the electoral college under the conditions determined by an organic law. The participation of member states of the Community in the electoral college is determined by agreement between the Republic and the member states of the community. Under the last para of Article 6, the procedure for implementing (this article) is to be determined by an organic law.

The electoral college as outlined above, elects the President.

Thus seen, the constitution breaks with the system of election by both parliamentary assemblies sitting together, but does not, therefore, adopt that of universal suffrage, whether direct or, as in the U. S. A., indirect. A middle way has been chosen. The President in France is elected by an absolute majority on the first ballot. If this is not obtained, he is to be elected on a second ballot by a relative majority. The voting is opened upon summons by the Government. In Oct. 1962 the constitution was amended and in future the President will be elected directly by the people.

In Para 3 of Article 7, it is provided that "the election of the new President shall take place 20 days at the least and 50 days at the most before the expiration of the powers of the President in office." The election of the new President was duly held in December 1958 as we have already noted. It is also provided that in the event of a vacancy in the Presidency for any cause whatsoever, or in case of prevention officially noted by the Constitutional Council, to which the matter has been referred by the Government and which shall rule by an absolute majority of its members, the functions of the President, with the exception of holding a referendum on bills and dissolving the National Assembly shall be temporarily exercised by the President of the Senate. In case of a vacancy or when the prevention is declared definitive by the Constitutional Council, the voting for the election of a new President shall take place, except in case of *force majeure* officially noted by the Constitutional Council, 20 days at the least and 50 days at the most after the beginning of the vacancy or the declaration of the definitive character of the prevention.

ELECTORAL SYSTEM IN INDIA

The electoral system of India rests on the basis of Article 224 of the Indian Constitution, the Representation of the Peoples' Act of 1950 and 1951 and the Conduct of Election Rules of 1961. The entire electoral machinery of India is centralized in an independent body called Election Commission, consisting of the Chief Election Commissioner as its Chairman and such other ... appoint. The

[illegible]

ing Election Tribunals in order to decide disputes arising out of elections. The Commission can also advise the President and the Governor upon any question relating to disqualification of any member of either House of Parliament or of State Legislature, as the case may be. The method of election for the Lok Sabha is Simple Majority System and 494 members are elected directly by the people. Six members come from Jammu & Kashmir Assembly who are formally nominated by the President to the Lok Sabha; 7 members are nominated—2 Anglo-Indians and

one each from Andaman & Nicobar Islands, Laccadive, Minicoy and Amindive Islands, Dadra and Nagar Haveli 'North-East Frontier Tracts and Naga Hills, Tuensang Area; 2 are to be nominated to represent Goa, Daman and Diu. In the Rajya Sabha, 12 members are nominated by the President from amongst those who might have acquired special knowledge or practical experience in literature, art, science and social service. Other 220 members are represenstives of the States and Union Territories. The elected members of the Legislative Assembly of each State elect their representatives for the Rajya Sabha, not on the basis of equality, but in accordance with their population, resources and general importance. A State like Uttar Pradesh sends as many as 34 members to the Rajya Sabha, and Assam sends only 7. A candidate for the Rajya Sabha should be at least 30 years of age, as against 25 years for the Lok Sabha. For the Lok Sabha, a person, who is a voter, say in Uttar Pradesh can contest from a constituency in the Punjab. But the Legislative Assembly of the U. P. can only elect a voter living in U. P. alone, to the Rajya Sabha. Members of the Legislative Assemblies of States are elected in the same way as members of the Lok Sabha. While the members of the Rajya Sabha represent the people of a State in an indirect way, the members of the Lok Sabha are the direct representatives of the people. The Lok Sabha is dissolved after every five years, although it can be dissolved earlier by the President. After each dissolution, fresh General Elections are held. In the Rajya Sabha, members keep their seat for six years and one third of the members retire every two years. If a member of Parliament or State Legislature dies, resigns or is disqualified, his seat is declared vacant and a by-election takes place to fill it. Under the Fourteenth Constitution Amendment Act (September 1962), elected Legislatures are to be set up for the Union Territories of the Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry. The number of members to be elected to the Lok Sabha from the Union Territories has been raised from 20 to 25. Under the Eighth Amendment Act (1960), the reservation of seats for the Scheduled Caste and Scheduled Tribes and the nomination of the Anglo-Indians to the Legislatures of the States and the Parliament, have been extended for a further period of 10 years, *i.e.* upto January 26, 1970. Among the qualifications laid down for the membership of Lok Sabha it is provided that a candidate must have been elector for any Parliamentary Constituency. A candidate for a seat in the Legislative Assembly of a State must similarly be an elector for any Assembly Constituency in that State. For a seat in the Legislative Council of a State to be filled by election, a candidate must be an elector for any Assembly Constituency in that state.

If a person holds any office of profit under the Government of India or the Government of any State, other than an offie declared by Parliament, by law, not to disqualify its holder, he will stand disqualified for membership of either House of Parliament

was a common ballot box for all the contesting candidates at both the elections and it was placed in front of a Polling Officer sitting near the voting compartment, visible to every one present. No ballot box was placed inside the voting compartment. Only one ballot box was placed to receive the ballot papers at any point of time. No symbol was pasted on the ballot box. The ballot papers were totally different from the ballot papers used at the previous General Elections. Every elector had to record his vote by stamping a simple cross mark, enclosed in a circle, on the ballot paper by means of a rubber stamp. A mark was to be made on or near the symbol of the candidate for whom the elector wished to vote. After stamping his ballot paper, the voter would fold the ballot paper with a view to concealing his vote and would insert the folded ballot paper into a ballot box kept in full view of the Presiding Officer. Every voter's fore-finger was to be marked with indelible ink with a view to preventing him from voting a second time. The Polling Officer was deputed to explain to every voter how to record his vote. The Presiding Officer could employ at the polling station such persons as he thought fit to help in the identification of the electors. Any Polling Agent could challenge the identity of a person, claiming to be a particular elector, by first depositing a sum of Rs 2 in cash with the Presiding Officer for each such challenge. After the polling, the ballot box was to be sealed and sent on to the Returning Officer.

For the elections of the President and the Vice-President, it is provided that a person qualified for these posts, must be quali-

any local or other [illegible]
But a person is not [illegible]
only that he is the [illegible]
the Governor of an [illegible]
for any State. The President or the Vice-President cannot be a member of either House of Parliament or of a House of any State Legislature and shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President or Vice-President. All doubts and disputes arising out of or in connection with the election of a President or Vice-President, are decided by the Supreme Court of India, whose decision is final. An Election petition, calling in question an election, is required to be presented within 30 days from the date of publication of the declaration, containing the name of the returned candidate. The election for either of the two offices is completed before the expiry of the incumbent's term of office, which is for a period of 5 years. In case it falls vacant by reason of his death, resignation or removal, or otherwise a new election is held as soon as possible after the vacancy has occurred but not later than 6 months. The person elected to fill the vacancy, holds the office for a term of five years from the date of his election. On the issue by the

returned candidate. The Election Commission sets up a One-member Election Tribunal, consisting of a serving District Judge or a retired High Court Judge, and refer the election petition to him for trial. The procedure applicable to the trial of an election petition is as nearly as may be, the procedure prescribed by the Court of Civil Procedure for the trial of suits. Against an order of an Election Tribunal, an appeal may be lodged with the High Court of the State.

As a result of the Third General Elections in India, the Congress emerged victorious at the Centre and in almost all the States. Out of the total electorate of 210 millions, more than 110 million voters polled their votes. The total number of candidates contesting both the Lok Sabha and the State Assembly seats was 14,744. For the 494 seats in the Lok Sabha, there were 1980 candidates and for the 2980 Assembly seats, there were 12,764 candidates. The total Assembly seats in the country are 3,196. Kerala (126), and Orissa (140) had Mid-Term Assembly Elections, and elections in these two States were, therefore, held only to the Parliamentary seats. Even in these elections no national opposition to the Congress emerged. In fact no party in India except the Congress contested more than 50% seats to the Lok Sabha. Although the Congress failed to secure an absolute majority in Rajasthan and Madhya Pradesh, it has been able to form the government even there. Top-ranking opposition leaders like Ashok Mehta, A. B. Vajpai, Acharya Kripalani, N. G. Ranga and Rama Rao, were all defeated. N. G. Ranga has since been elected to the Lok Sabha in a by-election held in August 1962 from the Chittoor Parliamentary constituency, where he defeated his Congress rival Mr. T. N. Vishwanatha Reddi by 1553 votes. The by-election was caused by the resignation of Mr. Ananthasayanam Ayyangar following his appointment as Governor of Bihar. All Cabinet Ministers, who contested, were re-elected, although a Minister of State, 3 Deputy Ministers and Parliamentary Secretaries suffered defeat. Mr. M. R. Masani and Acharaya Kripalani were elected to the Lok Sabha in the by-election (May 1963) held in Rajkot and Amroha respectively.

ELECTORAL SYSTEM OF THE U. S. S. R.

The basic principles of the Soviet Electoral system are universal, equal and direct suffrage by secret ballot, the responsibility and accountability of those elected to their electorate, and the right of electors to recall their Deputy at any time. Soviet citizens of 23 years of age can be elected to the Supreme Soviet of the U. S. S. R. Citizens of 21 years of age can be elected to the Supreme Soviets of the Union and Autonomous Republics, and persons of 18 years of age can be elected to the Local Soviets. The electoral rolls are compiled by the Executive Parties of the Town and Rural District Soviet

electoral rolls are posted

a citizen to

in the U. S. S. R. is very high. For example, in the elections of 1958 and 1962, more than 99% participated in the elections. Women are entitled to elect and be elected on the same basis as men. Elections are direct and constituencies are territorial and equal in size, each electing one Deputy. The Constituencies for elections to the Supreme Soviet, are formed by the Presidium of the Supreme Soviet of the U. S. S. R., which, not later than two months before the elections, publishes a list of constituencies. Constituencies are divided into Wards, where voters actually exercise their rights. Military units with not less than 50 and not more than 3,000 electors, constitute separate Election Wards. Wards are also formed in Hospitals and Maternity Homes, provided that they have not less than 50 voters. Election Commissions are set up to control the elections and an Election Commission consists of a Chairman., a Vice-Chairman, Secretary, and members. An Election Commission is formed in every Ward and in every Union or Autonomous Republic. The composition of the Central Commission is endorsed by the Presidium of the Supreme Soviet of the U. S. S. R.

The right to nominate candidates belongs to Public Organisations, the Communist Party, Trade Unions, Co-operative Associations, Youth Organizations and Cultural Societies. A candidate may stand only for one constituency. There is only one party in the U. S. S. R. which contests the elections, the Soviet theory being, that there are no antagonistic classes in the Soviet Union and, therefore, there is no basis for the existence of the so-called Opposition Parties. The Soviet Law provides for election of one Deputy from each constituency, but does not restrict the rights of organisations and societies to nominate any number of candidates they desire. All elections take place in the course of one day, which is a Sunday. A voter, who cannot fill in his ballot paper himself due to physical inability, can invite any voter into a booth to give him assistance. Polling cannot be suspended before the fixed hour even if all the voters entered in the rolls, cast their ballots, because any Election Ward can be visited by citizens with the Voting Right Certificate, which is given to those who, for any reason, may change their address in the period between the day when the electoral roll was published and the election day. A candidate is considered elected, if he gets an absolute majority of the votes cast and if not less than 50% of the electors in the given constituency cast their votes. If candidates do not get more than 50 of the valid votes cast, the corresponding District Commission declares not later than 14 days after the elections, a new election contested by the two candidates with the largest number of votes. It is provided that if the number of votes cast in the District is less than half of the number of electors, new elections are held. The elections in the U. S. S. R. are mass political campaigns and there is an intimate contact between the Deputies in the Supreme Soviet and the Soviet People. Under Article 142 of the Soviet Constitution, every Deputy has to report

to his electors on his work and on the work of his Soviet Working People's Deputies and he may be recalled at any time by a majority of the electors.

The Supreme Soviet is a bicameral body consisting of the Soviet of the Union and the Soviet of Nationalities. The former is elected by the citizens of the U. S. S. R. on the basis of one Deputy for every 3,00,000 citizens. The latter is elected by the citizens of the Union and Autonomous Republics, Autonomous Regions and National Areas on the basis of 25 Deputies from each Union Republic, 11 Deputies from each Autonomous Republics, 5 Deputies from each Autonomous Region and one Deputy from each National Area. The Deputies are elected for a term of 4 years. The Supreme Soviet consists of workers, peasants and intellectuals. The total strength of the Supreme Soviet that was elected in March 1962, is 1443, of whom 380 are women.

THE ELECTORAL PROCESS OF ITALY

Under the New Constitution of 1948, it is provided that all citizens, men and women, who have reached the age of maturity, are electors and the vote is personal, equal, free and secret. The age of maturity is 21, while married men qualify at the age of 18 years. The morally unfit and the convicted criminals and the former Fascist officials are excluded from voting. Members of Chambers of Deputies are elected by direct Universal Suffrage for 5 years and they have to be of 25 years of age. For their election, the country is divided into 31 Districts and one representative is sent for every 80,000 inhabitants. The method of election is Proportional Representation on Party Lists. Every voter has to indicate his preference. The voter may also indicate his preference for the particular candidates of his party, whom he prefers to send. Upon the completion of the voting, the national totals for each party are determined as well as the total votes cast. This is then divided by the number of Deputies to be elected plus 3, which produces an electoral quotient. Quotients for each District are also arrived at and then divided into party totals at the District level, which indicates the party's representation for each District. At the end, the preferences expressed for individual candidates, are tallied and results are announced. Bye-elections are rendered unnecessary by the maintenance of these lists and any vacancies can be filled in from them. In the final stage, all the unused votes of each party are pooled and the seats not yet assigned are totalled up. The former figure is divided by the latter to produce a quotient, which in turn is divided into various party totals to indicate proportionate assignment of the additional seats. The Senate is elected for six years by citizens of 25 years of age or older. To be in the Senate, one must be 40 years of age. One Senator represents 2,00,000 persons. All Regions except one, are constitutionally guaranteed at least six Senators regardless of their population. The Senate has 345 members,

237 of whom are directly elected and 5 of whom were appointed for life. The President of the Republic is selected for 7 years by Parliament in Joint Session of both Houses.

THE INFLUENCE OF ELECTORAL SYSTEM ON POLITICAL LIFE

This is one of the most ticklish problems in the whole field of Comparative Government. The reason is that although the factors conditioning political life are closely inter-related, they differ from one country to another and they include the general political situation of the country as well as the cultural level and political wisdom of the electorate. Moreover, differing systems might indeed, in a given situation, produce the same results, while the same system applied in differing situations might produce entirely different results. The efficiency of electoral systems is dependent in the first place, on political awareness within the country and in the second place, on the structure and the strength of the competing political parties. Much also depends on the atmosphere and freedom in which the election took place. An electoral system may be fully democratic in theory but in its actual operation, it may lead us nowhere. Nor is it necessary that a democratic structure and an electoral system, which is democratic, in theory, will necessarily lead to democratic political parties. What, then, is the real influence of the legal and technical features of the electoral system on party organisation, the political behaviour of the electors, public opinion and lastly the political system of a country ? At one time it was believed that suitable technical precautions to ensure a genuinely free vote were enough to create, almost automatically, the conditions in which the operation of the political system would satisfy both the logic and the practical requirements of the democratic principle. Unfortunately, the experience of the post-war years (after 1945) does not confirm this view. It does not seem that an electoral system, even if it guarantees the fullest possible freedom, automatically ensures the triumph of democracy in the internal administration of the parties, the guidance of public opinion or the operation of government. At first sight, it seems quite certain that a form of organisation based on a system of wide political and civil liberties, and including provision for a free vote, universal suffrage and Proportional Representation is democratic. But the situation seems rather different when we consider the structure and administration of the political parties, whose internal organization does not display the characteristic features of the democratic system, of which they form a part. The result is that the free organisation of the state in general is in constrast with the authoritarian system in force within the parties. The case of the Jan Sangh in India fully illustrates this point. It pays lip service to the principle of civil liberties, but this lip service has had no effect on its internal organization which is clearly undemocratic. Now, in such cases it becomes clear that these two conflicting systems cannot continue to exist side by side and that one or the other

must go under. While, according to the principles of Liberalism, the free institutions of the state should effectively influence the party institutions, making their spirit more liberal and their operations more democratic, in practice, a constant pressure is exercised by the authoritarian party system on the Liberal State system, leading finally to the loss of freedom, when the party comes to power and its authoritarianism becomes the basis of the government. At that point, the other parties disappear one by one as do all free institutions. The electoral system, even if it remains liberal in appearance, is bound to serve the new circumstances of political life. In such a situation, even if the electoral system is, on paper perfect, it is no more than a mask. The control exercised by public opinion, no longer means anything, as there is no guarantee of its free exercise, and no criticism is tolerated. Those who then protest in the name of democracy, against the suppression of all liberties, are immediately accused of treachery and expelled from participating in public affairs in the name of an authority, which has crushed freedom. The end is mobocracy—an order, on which no liberal influence can be exercised either by the political institutions in the country in general or by the electoral system in particular. It is a form of government in which individual initiative, individual criticism, and the point of view of the individual or of minority groups, are considered only so long as they are in line with the political trend imposed by the governmental authority. This is called mass rule by a perversion of logic, for, this implies the presentation of the aims pursued by the leaders at the apex of the pyramid, as the alleged demands of the base, *i.e.* the mass. This system begins with the change from a regime in which there are many parties to one, in which there is only one. We, in India can ignore this danger at our own peril. It is the considered opinion of this writer that the real threat to democracy in India, is not from Communism so much as it is from the R. S. S., the Jan Sangh, the P. S. P. and the Swatantra Party combined together. The Chinese attack on the Indian borders has already created conditions, in which the beginning of Mass Rule can be glanced through.

Can such a process be stopped ? And if so, at what point. It is a difficult question to answer, but, nevertheless, an answer must be attempted. In the view of this writer, that point is the point at which the two parallel systems of the state and the political parties clearly diverge—the point at which the party starts becoming authoritarian, while the State continues to function in accordance with the principles of liberty. We can stop this process in India, for example, by providing in the Indian Constitution for regulations for controlling the parties. It is an inconsistency in many contemporary constitutions, including that of India, that, on the one hand, they are based on the solemn declaration of the principles of freedom and the rights of the individual and, on the other, they make the political parties arbiter in the direction of public affairs, and make no provision for regulating the functions of

the parties in conformity with the existing institutions. Let there be no doubt that if a political party is allowed to organize and develop in accordance with dictatorial principles, which are alien to the legal organizations of the democratic state, conflict between the two is unavoidable. The only outcome of this conflict can be the triumph either of authoritarianism or of freedom. If we are to save the principle of freedom from being forced to surren-[illegible] of the principle of [illegible] must be completely [illegible] after all, we have done it in the case of the state; why hesitate in doing it in the case of a party also? If there is mass rule or authoritarianism in the party today, there is bound to be mass rule and authoritarianism in the state tomorrow. It is, therefore, essential that we must devise ways and means by legislation, by disciplining and schooling the political parties, by giving them a prescribed place in the constitution itself, so that in politics, individuals and groups should be able to express their will within the party as freely as they can do it outside the party. If the dogmatic principle of authority [illegible] is to exercise its natural influence on party organisation and the political regime, the state must defend the principles of freedom, *i.e.* the respect for the will of the individual, which some political parties are striving to root out in certain countries, as they have already done in many others.

It must also be pointed out that the electoral systems have also a definite impact on the social conditions of a community. If, for examle, in Germany, the method of election would have been Simple Majority System and not Proportional Representation, the Nazis would have obtained only 48 out of 400 deputies, a share corresponding to less than 2/3rds of what they actually did get. Again, the Plurality Principle can be said to minimize class and doctrinal attitudes, and cause the voter to think in terms of national welfare as a whole. Probably Hitler would not have been given the power in Germany, if the Weimar Republic used the Plurality System. The P.R. system does intensify sectionalism in the party system and Simple Majority Vote System does introduce certain degree of moderation and achieves a greater unity. The P. R. System in fact, fosters splinter movements, even in existing parties. In Switzerland, for instance, introduction of P. R. resulted in the emergence of the peasants, and the Bourgeois party, which was, for practical purposes a secession from the Radicals in 1919. In Sweden, it took some years (1911-1920) for the Agrarian party, really resulting from Schism in the Conservative party, to develop. In Norway, Proportional Representation brought about a schism in the Socialist camp. In the same fashion, the second ballot tends to encourage the proliferation of parties as the splitting up of similar tendencies does not compromise

their total representation since they always have an opportunity to regroup for the second ballot. In France, Switzerland, Germany and the Netherlands, the second ballot has reflected the multiplicity of parties.

It must also be remembered that the electoral system has a certain impact even on the internal structure of the parties. For example, voting for lists brings about a [illegible]thening, and voting [illegible] cture. There may [illegible], this will be found [illegible] collective operation, which pushes personalities into the background in favour of the group to which they belong. The most important exception to this rule is Britain, where, inspite of the Single-Member Elections, the discipline of the Parliamentary party is strong and the parties, in general, are highly centralized.

The electoral system has also an impact on the inter-relationship of the parties and on the alliances they form among themselves. Under P. R., alliances are often formed for the purposes of government and they are quite distinguished from the electoral alliances. Theoretically, the Double Ballot Majority System tends to lead to the formation of close alliances while P. R. tends to complete independence. In all the countries where the Second Ballot has been used, we can find more or less obvious signs of electoral alliances, for example, in Germany, France, Norway and the Netherlands. If the system of voting on a list promotes centralization and party discipline, it also strengthens alliances between the parties. In coalitions formed under the system of elections by Simple Majority, with a single ballot, the partners are very far from equal and these coalitions tend to the formation of satellite [illegible] m, the third [illegible] the ballot- [illegible]. Theoretically P. R. gives rise to more special problems in the matter of electoral alliances and the natural tendency of the system is to do away with them, as it removes reason for them. But, because this system very seldom gives any one party an absolute majority, it necessitates alliances in the government. It has the result of keeping governmental majority in a constant state of uncertainty, as in the case of the Netherlands.

It must also be borne in mind that electoral systems have an important influence on the accuracy of representation. Which electoral system will correctly reflect the prevailing public opinion, is a question, which every community has to answer for itself. It may be argued that P. R. ensures the greatest accuracy. But it may be pointed out that the practical changes, which have been made in the P. R. have often reduced its accuracy. In any case, it can be easily admitted that there is greater accuracy in P. R. than in a Simple Majority System, where the majority party tends to be over-represented and the

minority party underrepresented. And, if, there are a number of parties, the representation may be more arbitrary. Again if the difference between the *principle* of votes is very small, the representation may, in exceptional cases, be completely distorted: the party with the smallest number may secure the most seats and vice-versa. For example, in January 1910, the Liberals won 275 seats with 43.1% of the votes, and the Conservatives won 273 seats with 47% of the votes. In 1929, the Labour party won 289 seats with 37.5% of the votes and the Conservatives 262 seats with 37.97% of the votes. This situation may arise even under two-party Scheme. So far as the impact of electoral systems on the voting pattern or distribution of votes is concerned we can only suggest that under Proportional Representation opinions which have close local associations tend to permeate the whole nation, because all have the opportunity to secure representation even in regions, where they are very much in minority. In the Netherlands, Belgium and Switzerland, we can easily see this gradual nationalization of opinion. On the contrary, under the Simple Majority System, the majority vote accentuates geographical divisions of opinions and tends to convert national current of opinion into regional opinion, as the only chance of representation is in those parts of the country where its strength is the greatest. One can easily see this localisation of opinion in the U. S. A. Thus, one [illegible] to foster national unity or national [illegible] Vote accentuates local divergences. [illegible] or bad, according to the particular situation of each party. In France, P. R. seems to have accentuated the tendency towards nationalization and uniformity, which is regrettable. In Belgium, on the contrary, it mitigates the rivalry between the Flemings and the Walloons, which might be exacerbated, if the country went back to the Majority System. In the U. S. A. the Majority System intensifies the opposition between the North and the South.

THE ROLE OF THE CITIZEN IN PLANNING

No account of the electorate can be complete today without a word about the citizen's role in a planned society. This is important in all countries and more so in a country like India. In a planned society, nothing is left entirely free, *i.e.* left to private individuals or groups without the intervention of a central authority and nothing is centrally directed with practically no scope for individual choice and decision. Planning is, therefore, an intermediate stage between a complete *Laissez-Faire* system and a complete Collectivist society. In the 20th century, countries like Australia, Newzealand, several European countries, United States and India are experimenting with different doses of planning without developing into Collectivist States. In such a scheme of things, what is the place of a citizen ? The role of the citizen in politics today will be determined by the answer we give this question. Today, we have the problem not only to survive in this diffi-

cult world, but also to meet the challenge of modern war. This calls for strong Central Authority with large powers. The only limit on this authority is co-operation of the citizens. And this co-operation is not confined to one community, it has to be international, for, today, no State can hope to win a war on its own. A certain co-operation among friendly states is, therefore, necessary in the conduct of the war. This can be done only by government regulation. That is why planning and government regulation are regarded as practically identical. This identity constitutes a serious departure in the liberal tradition, which gave tremendous amount of freedom to the individual. But it must be realized that in the light of spread of education, growing consciousness, developed complexity in social and economic life, no central authority can function without active co-operation of the citizen. Indeed, any central plan would break down without it. Citizens' co-operation is necessary in the preparation of plans and in implementing them, a task, for which even a dictatorial government needs active popular co-operation. One man may lead a horse to the water, but 20 cannot make him drink it. While it is true that in the context of the modern war and in the light of the crucial need of quick development, as in India, the traditional liberties of the individual citizen will be subjected to serious curtailment. But it must be remembered that all planning has to be in the interest of the citizen. The Planner must always make a wise distinction between central planning and the innumerable details that are better left to the people, for whom the plan is done. The most important decisions must, of course, be taken centrally, but just as in war time no central authority is wise, versatile and far-sighted enough to regulate everything in detail, similarly in peace-time planning we cannot afford to depend upon the handful of the so-called genius to determine every detail of everyone's life. A central authority may co-ordinate the time-table of the different Railway lines, but it cannot control the topics of conversation inside the carriages. If a government body is of the opinion that 2.2 children in each family is the right number, the figure must be regarded as a national target and can hardly be taken as an instruction to individuals. A government can regulate the use and perhaps the prices of certain key raw materials in industry, but, if it tries to fix prices for Ice-cream Sodas, it will look silly.

All this calls for a certain amount of self-restraint on the part of the [illegible] ...ing the [illegible] ...s social [illegible], democratic controls on the state cannot be said to be incompatible with the ends of planning. Political and social democracies are not opposites. It is, of course, impossible to lay down by a fixed *a priori* rule the exact point at which planning has to stop in order not to endanger the citizen's liberties too much and frustrate the ultimate aim for which all policy is made for—human happiness. But a few things can be clearly said. In the first place, planning

needs a bureaucracy and bureaucracy can mean corruption and even tyranny which must be safe-guarded against. Secondly, in a planned society, it is easy to over-burden people with taxes and with shortages. This drawback can be got over, by bringing the central authorities into constant and face to face consultation with the people, and by delegating part of the planning and a large amount of the execution of the planning to regional and local authorities and, if possible to groups of citizens. Thirdly, even in the governing process, the government should enlist the active participation of the citizens by mass persuasion. The citizen must have the feeling that the plan is his and for his good. This can be done if information is given to him. A sound broadcasting system and a public spirited press can help to acquaint people with the national and international context of everybody's humble private task and to train the citizen to understand the integration of his work into the over-all plans. Fourthly, planning policies must be channelized through the customary Parliamentary procedure. Below Parliament, implementation of the plans can be delegated to the groups and citizens—the Trade Unions and the Co-operatives, which live nearer the common people. So far as guaranteeing the citizen's liberty is concerned, much can be done to achieve freedom under planning by democratic consultation with groups of experts and interested citizens and by transforming and expanding the present institutions. For example, a more complete system of administrative law can be built up. It must be made compulsory for all political parties to propagate the plans on a national scale. Just as by law, the internal organization of a party can be and must be made democratic, in the same fashion, by law, parties can be made plan-minded. If the rank-and-file participate in forming party policy, there will naturally be vertical and horizontal transmission of ideas within the political party. That will ensure freedom as well as planning. In a country like India, farmers' organization can play a very important part in planning. Their essentially free character will inspire confidence. In fact, in this country, a beginning has already been made in the Panchayat Raj. In Norway and Sweden, the Labour Management Production Committee has played a significant role in the build-up of a Welfare State. Such Committees are non-political and they discuss problems affecting the welfare of the worker. Just as in the industrial sphere, the worker can be encouraged to take part in discussions of technical problems, which have a vital bearing on his welfare, similarly, the individual citizens and representatives of organisations can be invited to speak at hearings on proposed legislation. This will result in the citizen participation in the legislativ processes and also in the administration. In Sweden, reference system has been developed, whereby proposals are sent to various national organizations for study and comment, depending on what interests are affected. Advisory Committees, attached to administration have played an important part in the U. S. A Community Councils or Associations mainly representatives of

voluntary interests and usually including official participation, are channels for citizen activity, which have been developed in the United States and England. The experience of the United States with county land use planning in 1938-41 stimulated the local citizen participation in the process of national agricultural planning. It illustrates the possibilities of team work between technicians and laymen. The wartime agencies for price and rent control in the United States and Britain made use of volunteers serving both as advisers on Policy and as administrators. In Norway, an Economic Advisory Council represents the major economic interest groups as well as government officials concerned with price control and economic reconstruction. Finally, everything would depend on the quantity and quality of the information given by governments to the citizens. Unless there is a factual basis, there can be no intelligent participation. The problem of planning is really the problem of harmony of economic and political interests and maximum harmony is possible only on the basis of understanding.

7

CIVIL LIBERTIES AND FUNDAMENTAL RIGHTS

A declaration of rights laying certain positive limitations on Government has ever been regarded as a prerequisite of a democratic government. Man has endeavoured to set the conditions of liberty beyond the reach of per-adventures sometimes by a conception of a limited liability state as in Locke, sometimes by separation of powers as in Montesquieu and sometimes by putting down a series of fundamental rights as part of the constitutional law which can be changed in accordance with a special procedure. The term 'Right' shorn of the metaphysics with which some might like to clothe it, is not particularly difficult to understand. While it is true that real liberty is the outcome of laws, it is also true that liberty implies a domain in which the individual is referred to his own will and upon which government shall neither encroach itself, nor permit encroachments from any other quarter. On the one hand, state is the source of individual liberty, on the other it is limited by it. While the state has the power to define the elements of individual liberty, limit its scope and protect its enjoyment, the individual, both for his highest development and the highest welfare of the society and state in which he lives should act freely within a certain sphere. The impulse to such action is a universal quality of human nature and cannot be thwarted for long by ideological barriers. The purpose of the state is indeed to safeguard and regulate this impulse.

NATURE OF RIGHT

Just because this impulse is universal, a right is the claim by an individual or by a group or association which is allowed and confirmed by other individuals, groups, association or associations. When a claim is thus recognised, it becomes 'right' and ceases to be wrong. It becomes the social good. It implies readiness on the part of the individual to do the good in order to have the good. Social recognition of claims may or may not include legal recognition. The test of right really is not whether it has been recognised by the law of the state. The test is whether the claim is just and is based on the good. The final judge of what is just and good is, of course, the community.

Rights, therefore, cannot be said to be absolute. They are related to the concept of social or general good. They are, as Locke has put it—those conditions of social life, without which no man can seek, in general, to be himself at his best.[1] On this showing "rights are prior to the state in the sense that recognised or not, they are that from which its validity derives." They are, therefore, changing rights. They are not historical except in so far as they are related to the problems of a certain period in history. They are not natural in the sense that they existed in some "state of nature" in the beginning or that they would exist in some idyllic state of nature at the "end." The theory of absolute rights is as invalid as the theory that right is a right because it has been recognised by the laws of the state and is enforced by it. Rights are enforced because they are that, and they are not rights just because they are enforced. What makes a claim a right is not the mere fact that it is recognised by law but that it is morally justifiable. And the test of morality is ultimately the social good. The law of Ghettos and the Pogrom decrees can never be morally justified because they do not adhere to the test of social good. The right to own slaves even though it may be legally recognised is no right because it is morally unjustifiable. You cannot have a "right" which you deny to me. You cannot claim a better treatment on the ground that you are better equipped to wage the battle of life. If a University man with a tremendous load of learning is guided by those premordial instincts of lust, anger, appetite, and sex, he does not become a better human being than an ordinary Rickshaw puller or a Minister whom we may consider as belonging to a lower species. Both eat and drink and sleep. Both lose tempers when provoked. Both love heir children and both want to be happy. Basically, therefore, they exist at the same plane. After eating and drinking my servant relaxes and feels happy in his station. I go about doing other things in my station which society has given me. Basically, therefore, rights are identical. Differences arise only when the basic needs of each individual have been met and these differences are related to the different social functions we perform.

Rights, therefore, rest on equality. But this equality is not, cannot and ought not to be mechanical. While certain rights can be given and must be given equally to all men, in regard to certain others, differences are necessary and inevitable. Equality by itself is no ideal thing. If all men were equally wretched, equally poor, or equally powerful, equality would be no boon. In a menagerie all the animals are equally under the whip. In a slave state all men, except the slave drivers, are equal in servitude. In this sense men may be more equal under a totalitarian regime than under a democracy.[2] Just as absolute liberty is license, absolute equality is tyranny. Any attempt to achieve

1 Grammar of Politics, p. 91.

2 MacIver R. M. *The Ramparts We Guard*, 1960 p. 14.

equality in wealth for all citizens, for example would surely result
kinds of
equality
the state
prevent
, protects
the right to organize, and curbs the exploitative power of wealth. Then, there is the equality of civil rights which includes the right to count equally with every one else in the determination of government. Beyond this, the attempt to establish equality is mere craze and is the beginning of trouble. Beyond this, there is the Man with his worth and dignity as Man, with his potentialities, aspirations and desires which vary endlessly from man to man. If equality means, as Laski puts it, "the minimisation of the handicaps our present social order imposes", it a is desirable ideal. But if all men were "equally" wretched, "equally" poor, or "equally" powerful, the equality would be a curse. We may quote with approval what MacIver writes in this context :

"It is within the mission of democracy, and entirely congenial to its nature, that it should remove the insidious inequalities that frustrate and balk the fulfilments men are capable of, the inequalities that arise from cramped circumstances, from the unequal hazards of life, from privileges and from 'births' invidious bar', and from all the tyrannies of man over man, group over group.
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For positions regarding expert training and professional experience every man is not as good as his neighbour nor is every man equipped to determine who is better than whom."[1]

The truth is that equality as an abstract notion, far from supporting rights succeeds in throttling them. It can be the most dangerous and the most soulless of all the claims, for it does not explain why unequal men performing unequal functions should possess equal things. Society does not gain anything out of it. It is grossly stupid. It is also grossly dangerous. The tragic irony of this blind faith in abstract equality is that to achieve its objective it would ruthlessly endow the engineers of its programme with a deadly and all embracing power before which all inequalities shrink into insignificance.

With the qualifications we have noted, rights represent the basic urge of the individual to be free. That is why sometime they may justifiably be called natural rights or fundamental right or human rights. They are relevant for the development of human personality or for the realization of human nature. They may find a place in the basic or fundamenal law of the land and be given, for that reason, a special status. If there is any conflict between a law and those rights, the latter would be upheld.

1 *Ibid* p. 17.

They may be viewed as "fundamental" for national unity and so they could not be amended by ordinary legislation and could not ordinarily
called fund ... use these rights are
sised, becau ... , it must be emphasised ... They are related to the times in which they are discussed. For example, in the French Declaration of the Rights of Man and the Citizen and the U. S. Declaration of Independence, the rights stressed were those of (*a*) Equality (*b*) liberty (*c*) property, (*d*) happiness and (*e*) the right not to be taxed without consent. This was in the 18th century when liberty was viewed as negative—absence of restraints and when the state was a Police State. Gradually the idea of positive liberty appeared and it ushered in the welfare state. The scope of freedom widened; the volume of state activity expanded. It was now freely argued that liberty presupposes positive conditions in which alone it can be real liberty. These conditions are rights without which no citizen can hope to achieve the best that is in him. Such rights, therefore, cannot be left to the care of ordinary law for they are not the creatures of law but its condition precedent. They are that which law is seeking to realize. Such conditions or rights are simple to envisage. A citizen's right to life and liberty will make sense only in that he has the right to gainful employment, right to adequate wages, right to reasonable hours of labour and right to leisure without which he will not be able to "discover the land of the mind" and the intellectual heritage of the race". ...
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through which,
worker may find expression. In a democratic system it is impossible to maintain political freedom with industrial autocracy." We have referred to the right to education which will enable him to differ materially from animal world. Then, there is the traditional right to political power which in modern society involves the right to choose the Governor, and the right to be chosen for political offices. The right to freedom of speech constitutes the life breath of a society. In order that the State safeguard it effec-

... commitment is a virtue and political difference a heresy. Freedom of speech with the freedom of assembly is ' at once the katharsis of discontent and the condition of necessary reform." If we are to be saved today it must be through scepticism and a government can learn more from the critics than from the sycophants.[1] Her Majesty's Most loyal opposition leader in the U. K. renders as valuable a service as Her Majesty's Prime Minister. Freedom of speech not only gives the individual the freedom to mobi-

1 The Spirit of Liberty. Papers and Addresses of Learned Hand, p. XXV

lize public opinion by expressing his views on the platform and by associating himself with other individuals in assemblies but it also includes his right to make his views known through printed word. This freedom of the Press—the Fourth Estate, is subject only to the limits imposed by considerations of decency, fair criticism and continued existence of the state. Even in War time the individual must have right to criticize the conduct of the war and even the act of war itself. If in the context of the Sino-Indian border trouble I feel that peace by negotiation is better than victory in the field because of the human cost that victory would necessarily involve, I have a right to say so because I have an obligation to fellow citizens who are paying that cost. "It the policy of a state in making war does not command the assent of its citizens in general, it has no right to make war. If those hostile to it are a considerable proportion of its citizens the policy is, at the least, a dubious one. If the number is small, there is no need to attempt suppression in the interest of success. Even if an actual invasion has taken place the individual rights to press for peace must be supported, for, the person who is exercising this right is really "contributing according to his lights, his instructed judgment to the public good."

Just as the individual has the natural right to freedom of
[illegible] conscience. He must have
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of course, it uses it authority to force a change of policy by fomenting civil disobedience or disorder, it is exercising a form of pressure which can properly be met by power. Subject to this the Church must stand separated from the State otherwise the dissenters would be condemned as heretics. This is as important as the doctrine of Separation of Judiciary from the Executive without which the individual cannot have any judicial safeguards for his rights. The average citizen's right to property today is invaded not by the proletariat so much as by the propertied classes. While, therefore, the right to property must be guaranteed to the individual, its basis must be clearly made out. Its basis is not *laissez faire*. Its basis is again social good, and decency. Beyond a certain limit, possession of wealth becomes indecent, to say the least. Just as the State protects private property against theft by other individuals, similarly it must protect it against income tax evaders, black-marketeers, hoarders and the rest. If the right to work is to have real value, the individual right to strike must be protected provided, of course, that the object of strike is to wrest a wage increase from employers and not to force a change in state policy or, by a syndicalist general strike to make a revolution by paralysing the economy.

These examples are sufficient to indicate the distance between the concept of rights enshrined in the French Declaration of the Rights of man and the U.S. Declaration of Independence and

the Ten amendments. The Soviet Constitution of 1936 represents the urge of the Soviet man and also indicates the difficulties that one has to meet in realizing this urge. The Atlantic Charter of 1941 mentioned four freedoms—freedom of speech and belief but also freedom from fear and want. The Universal Declaration of Human Rights was passed and proclaimed by the General Assembly of the U.N. on December 10, 1948. This document lays down a minimum standard of human rights based on the inherent dignity and the equal and inalienable rights of all members of the human family. It affirms that all h
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on account of infringements of clearly defined laws proved to the satisfaction of independent courts. The right to personal liberty should entitle people to move al
the right to join with other people to form associations. Among economic rights, the declaration mentions the right to own property, to work for one's living, and the right of specially needy categories of the population—the sick, the unemployed, widows, and children—to receive aid from the state. It claims the right of all to receive equal pay for equal work, equal rights to education; and the right of everybody to protect his interests through a Trade Union.

Now if we compare the terms of this Declaration of Human Rights with those of earlier declarations, it will become very clear that there are a number of rights which today are held to be natural or normal, but which had not even been thought of a century and a half ago. That substantiates the statement we made earlier that rights are constantly changing. In the 18th century, rights were thought of in almost exclusively political terms, for, the battle for economic equality had hardly begun. Today, it is commonly accepted that political rights alone cannot achieve the equality and liberty which were claimed as fundamental rights in 1789.

Rights are not only a dynamic concept, but they are also a subjective concept. They mean different things to different people. Liberty will appear to be a good or bad thing according to circumstances. Right to freedom does not mean to the U.S.A. what it means to the U.S.S.R. That explains one of the most

interesting developments in post war Europe. It was provided in the Potsdam agreement that free and unfettered elections on the basis of adult [illegible] future of that coun[illegible] s'des meant entire[illegible] and 'free elections'. As one authority has put it, "If we think of claims to fundamental rights as a kind of song sung by the human race through history, then as long as we look only at the words, it seems to be much the same song. But nations have sung it to widely different tunes. Wherever people have demanded the right to liberty, equality, association, security, freedom from want, or freedom from fear, the claimants have had at the back of their minds a more or less precise picture of the ways in which they thought the principles ought to be applied."[1] In one type of society freedom of the press may signify the freedom to criticize the government, private ownership of the Press and Press agencies, in another society it may stand for the social ownership of the Press and the duty to support the decisions of the government. In one context freedom of conscience and worship may mean freedom to propagate any religion you like; in another it may only connote the freedom to carry on anti-religious propaganda. So much, we suppose, can safely be said that fundamental rights and civil liberties mean, in the main, protection or checks against undue interference, whether this be from individuals, from masses, or from government. The highest amount of liberty comes to signify the safest guarantees of undisturbed legitimate action, and the most efficient checks against undue interference. That, naturally, implies obligations or duties. If you claim the political right to freedom of expression, you concede a similar right to your fellow beings. In other words, you must respect their right to speak freely, or better still, you have an obligation, a duty not to injure their right and a duty to exercise your own right with necessary restraint. The state has a duty, too, not to infringe this right. If you violate other's rights, they will make the state the arbiter; if the state were to violate these rights, a general rebellion would [illegible] he community would [illegible] rights must emphasise [illegible] firmation of adequate [illegible] as a citizen in accordance with his interests and abilities. This necessarily implies freedom of speech, freedom of the Press, freedom of conscience, freedom of assembly, freedom from arbitrary arrest, and freedom from want. Now, if I claim the right to be free from want as I must, it would imply the duty of the state to build an economy which would rule out exploitation, forced labour and would ensure health, education, rest and leisure. It would, furthermore, lead to the concept of social ownership of means of production and would give birth to the concept of public property with which right to property is to be adjusted. It would cast a duty on

1 Dorothy M. Pickles, *Introduction to Politics*, p. 156.

not to damage this property and to contribute to this property. The individual right to property today is not so much threatened as by the community as by Monopolies. If this threat is to be met the individual must agree to cede some control to the community and must accept the duty to defend, protect and augment public or social property. We may thus conclude that just as the concept of rights has been widening, similarly the concept of duties has also been growing. You cannot have the one and leave the other. This interrelationship is fully reflected in most of the modern constitutions.

RIGHTS WRITTEN OR UNWRITTEN ?

Should fundamental rights find a place in the Constitution or should they be left to be determined by the legislature and the Courts in the ordinary course ? One view is that there can be a great deal of potential harm in any formulation of constitutional guarantees, for no draftsman can produce a formula which will be satisfactory even in the short run. The Constitutional guarantees in the American Constitution have often been used by vested interests to obstruct legislation, (*e.g.*, Newdeal) desired by a large [illegible] any case those who frame the constitution of a country, say in 1962, cannot possibly, prophesy what the social and economic problems of that country will be, say in 2062. After all constitutions last for centuries and the framer of a chapter on rights ought to know something of the social and economic problems of the country he is dealing with. The basic problems [illegible] judiciary and prevention of discrimination in respect of race, religion, caste, sex and language. The usefulness of a written document on fundamental rights should, therefore, be judged by whether it will help in solving these basic problems. In countries which have a well established tradition of democracy these problems have largely been solved. They are important in countries which have recently been liberated and which after liberation, have opted for democratic forms of government. In these countries the real danger to the constitutional structure arises from extremists of the right and the left which attempt subversion and infiltration in the army, police and radio and which use all the constitutionally guaranteed rights just to destroy those very rights. Here, therefore, the problem can be met not so much by giving wide discretionary powers of an emergency character to the government as by constitutional guarantees. After all [illegible] to those who [illegible] of the judici- [illegible] by constitutional guarantees, for, it is a matter of an honest, impartial and independent judge and an up-

right, fearless and incorruptible lawyer. It is the moral rectitude of the bar which is the best guarantee of a dependable administration of justice. Discrimination on the ground of race, religion *etc.*, can hardly be checked by a Bill of Rights for, it is a matter of public opinion as we know so well in India. The constitution may abolish untouchability but if people chose to practise segregation and exclusiveness, who can stop them? Seventeen years after the constitution has gone into force, we have not been able to solve the problem of minorities and we are still exploring the ways and means of emotional or national integration.

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e desirable change.

After all what appears to be fundamental today may appear to be superfluous fifty years hence and another generation may call for a change. Then, there is also the supreme problem of interpretation. A written declaration of rights limits the powers of the legislature which contains the real representatives of the people; it has to be enforced by the state; it has, that is, to be interpreted by the Judges. Now in a court consisting of 15 men, 8 can control the entire destiny of a nation. They may be most eminent, most honest and most independent, but they do not necessarily represent the aspirations of the people. They may be reactionary, conservative, radical or ultra-modern. As eminent, learned, and honest folk they will be men of character, men of convictions which they will never sacrifice for the sake of the multitude. Their opinions are, of course, changeable and that lends to their pronouncements an unc

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new judges may well shift the whole balance of interpretation. Witness, for example, what happens in countries like the United States or India. Terms like liberty may be interpreted differently by different judges or differently by the same judges in different circumstances. "In 1940 the Supreme Court of the United States was asked to decide on the validity of a regulation of a school board in the state of Pennsylvania which required children attending the state schools to participate in a ceremony of saluting the American flag. (*Minersville School District* v. *Gobitis*, 310 U. S. 586). Some children of parents who belonged to the sect known as 'Jehovah's Witnesses' had refused to salute the American flag on the ground that to do so was in conflict with their religious beliefs. The Supreme Court was asked to declare that the regulation was invalid because it attempted to prohibit the free exercise of religion. The Court decided, with only one dissentient, that the regulation was valid. The argument of the majority was
the regulation, in requiring a ceremony of respect for the
was attempting, however unwisely, to strengthen the f...
of American society, and thus, so far from infringing libert...
supporting the basis upon which it existed. The Court ref...

substitute its own judgment of what was desireable in a matter of this kind for the judgment of the legislature. The dissenting judge Mr. Justice (later Chief Justice) Stone declared that the regulation was so clear a violation of liberty, both of speech and religion as guaranteed by the Constitution, that the Court was entitled to declare it invalid. In 1942, however, in the course of deciding a case, also brought by the Jehovah's Witnesses, concerning the validity of a requirement in the ordinances of certain American that sellers of various articles including books should be licensed, three of the judges of the Supreme Court, Justices Black, Douglas, and Murphy, said that they had come to the conclusion that their view in the earlier case involving the saluting of the flag was wrong (*Jones* v. *Opelika*, 316 U. S. 584 at pp. 623-4) .A year later, the decision in the case of 1940 was overruled, though by a majority (*West Virginia Board of Education* v. *Barnette*, 319 U. S. 624). It may be mentioned that two new judges sat on the Co
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ds of this kind.

'Liberty' in the economic sphere may legitimately be used in different senses. One may say that economic liberty means that a man may sell his labour for what he can get for it and work for as long as he can; another will say that, in the world as it is, many men will be unable to sell their labour at all unless some restrictions are placed upon maximum hours of labour and minimum rates of wages. The first view we associate with *laissez-faire* the second with the age of collectivism. The Supreme Court of the United States has not been unaffected by the changes in opinion in that country during the first half of the twentieth century. In 1905 (in the case of *Lochner* v. *New York*, 198 U.S. 45) the Court declared that a statute of New York State which had fixed a minimum of sixty hours per week and ten hours per day for bakers was invalid, on the ground that it violated the liberty of the citizen

r, the Court unanimously
fixing a maximum of ten
ain employments (*Muller* v. *Oregon*, 208 U.S. 412), and in 1917, by a majority of five to three, it sustained an act of the same state extending the maximum of ten hours to men (*Bunting* v. *Oregon*, 243 U.S. 426).[1]

More glaring examples could be cited from the history of the Indian judiciary. The basis of reversals of judgments has been the practice of distinguishing the present case from the previous one which seems to provide so much money to the legal pro-

1 K. C. Wheare, *Modern Constitutions*, p. 64-67.

fession and so much work to the Judges. The way the Supreme Court after delivering judgment in the *United Motors Ltd.* (Bombay) and in *Himmat Lal Hari Lal* v. *State of Madhya Pradesh*, and in the *State of Travancore Cochin* v. *S. V. Cashew Nut Factory* (1953) reversed its interpretation of the law in the *Bengal Immunity Case* (1955) was simply startling. In the *State of Bombay* vs. *The United Motors Ltd.* the Court, interpreting the Bombay Sales Tax Act of 1952, held by a majority of four to one that the state in which foods were delivered for consumption had the right of taxing the out-of-state seller who sold goods for such delivery. In the Bengal Immunity Case the Court by 4 to 3 held that a state was not empowered to tax out-of-state dealers for goods delivered in the State for consumption therein. In 1955, the Court was largely a new one, including the Chief Justice. The law was changed and in this case the law became, in the words of Justice Frankfurter, "the expression of chance, for instance, of unexpected changes in the Court's composition and the contingencies in the choice of successors". Moreover, the Court not only reversed itself, it also ordered that the State of Bihar (which was taxing out-of-state dealers for goods delivered for consumption therein and which had asked the Bengal Immunity Co., of Calcutta to get itself registered under the Bihar Sales Tax Act of 1947 and to submit a return of its turn-over in Bihar for the year 1950-51) must pay the cost throughout presumably because it had followed a previous interpretation of the Constitution by the Supreme Court. As one recent writer has put it "it was penalized because it failed to foresee that the Court in 1955 would reverse a decision given in 1953."[1]

mic and social values, they must do it. But, then if the law is changed by the courts the way it is done sometimes in many countries, the fundamental rights are rendered meaningless. After all the judicial opinions and interpretations are the handwork of human beings who can make and who do make mistakes. "History, social needs, the personality of a judge, philosophical attitudes, logic, linguistics, all of these may be forces in the foramtion of a particular decision in the public law." Unanimity even in the courts is often not possible. Judges sometimes differ radically amongst themselves. The court may be divided evenly. Sometimes judgments are delivered by a majority of only one. There are cases when judges deliver similar verdict though for different reasons. This majority is the outcome of "conflicting minorities in combination." Pinning faith to the wisdom of a few human beings who do not necessarily represent the community may, in practice, negative fundamental rights which may be

2 Sri Ram Sharma, "*The Supreme Court In the Indian Constitution.*" pp. 247-248.

pompously paraded in the constitution as invoilable. After all it is all a matter of interpretation of ambiguous phrases and words used in law or the constitution.

The words of the law in question or of the constitutional provision concerned may be vague or qualified, and may be changed with emotional or political content, and may, so to say, impose a task on the judges so heavy and so difficult that they could not discharge it without running the risk of involving

or reasonable or fair compensation" or "due process" or "public welfare" or "liberty" or "safety of the state," and that this task they can best leave to the legislature. But if this is done, there no longer remains any difference between rights constitutionally guaranteed and, therefore, beyond the tampering patterns of the legislature, and the rights which are left to the care of the legislature. We, in a way, come back to reliance upon the common sense and restraint of the legislature. After all, if the Directive Principles of State Policy (as in India) can be made non-justiceable because they are vague and general and are in the nature of moral injunctions, the fundamental rights too must be left to the legislature if they are vague and general. The Courts can perform their duty in this matter only if the language of the declaration of rights is clear and precise. But, then, in attempting to make it precise, there is always the danger of making it rigid. In other words, the framers should try to define these rights or better still, to qualify them. A study of Part III of the Indian Constitution (Arts. 12-35) and their working will give the reader some idea of the sincerity

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of his personal liberty save in accordance with law. In India, no person shall be deprived of his life or personal liberty except according to procedure established by law. Now, what does this amount to? It all depends upon the law which the legislature can make any time. The written guarantee of this right, in the Constitution is almost meaningless.[1] It is an empty promise for it is given with one hand and taken back with the other.[2]

1 See Art. 7 (Belgian Constitution; Art. 164) (Constitution of Holland); Art. 99 (Norwegian Constitution); Art. 16 (Sweden's Constitution); Art. 78 (Denmark).

2 Cf. Art. 43 of Irish Constitution.

This sort of farce may even tend to subject the entire constitution to public ridicule, which, we think, may have disastrous consequences. The supreme guarantee of fundamental rights is not the constitution, not even the Courts, it is a strong public opinion. Just as the mere existence of fundamental rights in the American Constitution has done little to protect the negroes in U.S.A., the provision of fundamental rights in the Indian Constitution alone cannot wipe out untouchability from India. If a community has the requisite character, consciousness, commonsense, sense of civic obligation and a respect for rights, a constitutional guarantee of rights is superfluous and to leave them to the ordinary processes of law-making would make them just as effective. It will have the added advantage of making them flexible. But you have to frame a constitution for people who hold the Executive in greater awe than the constitution, who lack *knowledge or the capacity to public opinion, who are intolerant, who,* [illegible], a written declaration [illegible] nunciation of certain [illegible] make their exercise effective. *On this showing, we are driven to the conclusion* that the best course is to depend, for fundamental rights, on the legislature. As they say about Britain· "The British constitution contains one clause : there shall be a Parliament, and it may do what it pleases."

This, then, is the English view. But there is the other side also which a student of comparative government cannot altogether neglect. *And to understand this, we must turn to the study* of this problem in the context of countries like India and the United States. In both countries there was a real demand for constitutional guarantees which could not have been rejected, merely on *theoretical grounds. While, of course, the framers of* the U.S. Constitution observed the maxim that "brevity is the soul of wit." in India, we have gone by the formula "more the merrier", and this led to the joke that here no one can blow his *nose without express constitutional authority !*

In India, the demand for fundamental guarantees was born of a sharp opposition to a large volume of repressive legislation. In the beginning the Indian lawyers attempted to check the serious inroads on the liberties by arguing that the Magna Carta, the Petition of Rights, the Bill of Rights and the Act of Settlement—the cornerstones of the English Liberties—were to be regarded as the fundamental laws of India too and that any Indian legislation that came in conflict with anyone of them was *ultra vires* and null and void. It was argued, but unconvincingly argued.[1] that the

1 *Cooper* v. *Stewart* (1889) 14 App. Cas 286 p. 29. It was held that the extension of Britain's sovereignty over India has been made in gradual stages and through different processess. The common law of England recognised a great difference between the case of a colony acquired by conquest or cessation in which there is an established system of laws and that of a colony which

Queen's Proclamation of 1858 made the Constitutional principles governing the British Crown binding on the Indian Courts as laws and that the connection between India and England led to the introduction of the English law in this country and with it the Constitutional Charters. It would, however, be noticed that, in the first place, the English first came to India as traders and established colonies. Later on, they acquired sovereignty partly by conquest and partly by cession. Again, they found here at least two well organised systems of law which they did not and could not repudiate. The English Law, therefore, could not and did not automatically come to India. English law could be binding on India if it would have been a case of an English Settlement. As Lord Blackburn put it, "When the Province was founded by the English settlers who went out there, those English settlers carried with them all the immunities and privileges as those who remained in England."[1]

In the second place, in England the Parliament being legally supreme and sovereign, the freedom of the individual is founded on the *ordinary* law as enacted by the [illegible] : and its area can [illegible] e individual are [illegible] *ultra vires* the Legislature. [illegible] them could be individual rights like the Magna Carta and Bill of Rights, therefore, had no over-riding power over the Parliament. They were "merely declaratory of the existing comm[illegible]

[illegible] selves and to incorporate in it a declaration of certain basic rights binding upon the State. The idea of a Constituent Assembly for India was first mooted by Mr Nehru in [illegible]

[illegible] were supposed to have carried the law of England with them, Ireland and India constitute a different case and the first concern of the people in both was to secure fundamental rights that have been denied to them in a manner that would not permit their withdrawal under any circumstances. Another reason why great importance attached to a declaration of rights is the unfortunate existence of communal differences in India. "Certain safeguards and guarantees", the Nehru Report added, "are necessary

consisted of a tract of territory practically unoccupied, without setted inhabitants or settled law, at the time when it was peacefully annexed to the British dominion. Also F. *Forsyth's Cases and Opinions*, p. 17 and Calvin's case in Ruling Cases Vol.II, p. 575. Lord Mansfield's judgments in *Campbell* vs. *Hall* is instructive and conclusive. Refer to 20 State Trials, p. 239.

1 Quoted in B. Banerji's *The Constitutional Rights and Duties in India*, 1946, p. 8.

2 Basu's *Commentary on the Constitution of India*. Third Edition, p. 71.

to create and establish a sense of security among those who look upon each other with distrust and suspicion. We could not better secure the full enjoyment of religious and communal rights to all communities than by including them among the basic principles of the constitution."[1]

In pursuance of this line of thought, the Congress passed a Resolution on Fundamental Rights in 1931. "In order to end the exploitation of the masses", thus ran the Congress Resolution, "political freedom must include real economic freedom of the starving millions." The Congress declared that any constitution which might be agreed to on its behalf should provide or enable the Swaraj Government to provide for certain fundamental rights and duties. The Simon Commission while fully appreciating the point of view of those who urged that the Indian Constitution should contain definite guarantees for the rights of individuals in respect of the exercise of their religion and a declaration of the equal rights of all citizens rejected the idea on practical grounds. Abstract declarations are useless, unless there exists the will and the [illegible] up with the question of the powers of the Legislatures. It was [illegible] rely upon the "special responsibilities" with which the Governor-General and the Governors were to be endowed in their respective spheres to protect the rights of minorities. As the Joint Parliamentary Committees' Report (1933-34) put it, the most effective method of ensuring the destruction of a fundamental right might be to include a declaration of its existence in a constitutional instrument. The question of fundamental rights in a country like India, they argued, involved various difficulties. On the one hand, there was the dilemma that either the declaration of rights would be of so abstract a nature that it would have no legal effect of any kind, or its legal effect would be to impose an embarrassing

1 *Nehru Committee Report* (1928) Ch. VI.

2 *Simon Commission Report* (1930) Vol. II para 34. They add: "But we consider that the only practical means of protecting the weaker or less numerous elements in the population is by the retention of an impartial power, residing in the Governor-General and the Governors of Provinces to be exercised for this purpose". This view found expression in the White Paper of Dec. 1931, of para 122. "The Federal Legislature and the Provincial Legislatures will have no power to make laws subjecting in British India any British subject in respect of taxation, the holding of property of any kind, the carrying on of any profession, trade, business or occupation or the employment of any servants of agents, or in respect of residence or travel within the boundaries of the Federation, to any disability or discrimination based upon his religion, descent, caste, colour or place of birth".

restriction on the powers of the Legislature, and to create a grave risk that a large number of laws might be declared invalid by the courts because of being inconsistent with one or other of the rights so declared. On the other hand, there was the special difficulty created by the State's refusal to apply any declaration of fundamental rights in their territories.[1] Thus, inspite of our demand of a declaration of fundamental rights, the Government of India Act, 1935 did not provide for it.

The new wave of repression which followed the outbreak of the second World War and the resignation of Congress ministries in the provinces, the suspension of the constitution and the August 1942 Movement following the Quit India Resolution reinforced the nationalist opinion in India for the need of a declaration of Fundamental rights in the Constitution of India.[2] The cir- [illegible] mentioned in the Joint Parliamentary Committees' Report referred to earlier. However, the partition had temporarily accentuated the gulf among the people and the Constituent Assembly appointed an Advisory Committee on Minorities to recommend provisions, relating to the minorities. It appointed the Fundamental Rights Sub-Committee which recommended two sets of rights, the first part consisting of rights enforceable by appropriate legal process in the whole country and the second consisting of directive principles of social policy, which though not justiceable, were yet to be held fundamental in the governance of the country at the centre and in the [illegible] ons led the committee, to [illegible] s. The absolutist tradition, and [illegible], strong communal instincts [illegible] feudal social structure [illegible] servitude, exploitation [illegible] the institution of property presented by the internal and external communist challenge—all these factors and forces lie at the back of the third Chapter of the Indian Constitution.

1 Joint Parliamentary Committees' Report 1933-34, para 366.

2 See for instance, the Constitutional Proposals of the Sapru Committe (1945) para 365".. howsoever; inappropriate the tabulation of fundamental rights may be in England and howsoever inconsistent it may be with the fundamental dogma of the British Constitution that fundamental rights are in competition with the Sovereignty of Parliament in the peculiar circumstances of India we are distinctly of the opinion that the framing of fundamental rights is necessary not only for giving assurances and guarantees to the minorities but also for prescribing a standard of conduct for the lgislature, Government and the courts...We would be sorry if consitutional juristis or lawyers under the spell of English law treated fundamental rights as nothing more than moral maxims or adages".

The Indian Constitution sets out a most elaborate declaration of human rights yet framed by any state. These rights fall into [illegible] Right [illegible] and [illegible] ional Remedies and occupy 24 articles of the constitution. Broadly stated, there are two kinds of rights provided in the constitution. The one group consists of those rights which are absolutely binding on the state and any act of the state which conflicts with any one of them would, to the extent of repugnancy, be null and void. These rights are what lawyers call constitutional limitations. The second group contains provisions which are subject to limited restrictions that the State might impose. In case the restrictions thus imposed travel beyond the prescribed limits, they can be held void. Again, there are certain rights, *e.g.*, right to eqality, right to freedom and right of minorities to establish and administer educational institutions, which are limited to citizens alone: there are others which are available to citizens and aliens both. Similarly, there are rights which constitute or place limitations on State action and there are others which limit the freedom of action of individuals. In the case of the former, there cannot lie a constitutional remedy for breach of such a right by a private individual, unsupported by State action.

In England there are no written guarantees of individual freedom and an individual has the right and freedom to take whatever action he likes, so long as he does not come in conflict with the law of the land. The Parliament being Supreme and Sovereign, the English Courts of law have the power to protect the individual against the Executive but none against the Legislature. If an Act of Parliament has been obtained improperly, it is for the Legislature to correct it by repealing it; but so long as it exists as Law, the Courts are bound to enforce it. This position in fact can be understood in the context of the constitutional struggle in England. The fight which they fought was against the executive. The real danger of invasion on the freedom of individual flowed from the king. If any limitation was to be placed to secure this freedom, it was to be placed on the Executive. The Parliament was a symbol of democracy. Parliamentary sovereignty was a shield against the Executive tyranny.

However, it was different with the Americans who were as apprehensive of the Executive as of the Legislature. The conviction of the framers of the American Constitution was that a government which holds the lives, liberty and property of its citizen, subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power is after all but a despotism. In U. S. A., therefore, the fundamental rights are available against the Legislature as well as against the Executive. On the one hand, the Courts of law can declare an act of the American Congress, if in their judgment it abridges the rights of individual, *as ultra vires* and void and, on the other hand,

they and not the Congress, can regulate or limit any of the rights in view of any emergency or peril to the State. It is the Supreme Court and not the Congress which is supreme in relation to the fundamental rights. There is nothing like the theory of security of the state. On the ground of state security, the Congress cannot curtail the scope of individual rights. Under the so-called doctrine of Police powers, the Courts do acknowledge the power of the Congress to limit the rights in the interests of state but the exercise of this power has to be proper and whether in a given case, it has been proper or not is subject to the judgment of the Court. In short, the Constitution is what the Supreme Court says it is. Nor can the Congress amend the rights. Then again in the U.S.A., there are unenumerated rights under the 9th Amendment according to which the enumeration of certain rights shall not be construed to deny or disparage others retained by the people.

In India, the theory of natural rights has not been accepted and the individual cannot claim any unenumerated rights. Then again, the fundamental rights in the Indian Constitution are not absolute. They are limited. In some cases the limitations are imposed by the Constitution itself. In others, Parliament has been given the power to impose further restrictions and in doing so to confer authority on the executive to carry its purpose into effect. But in every case it is the rights which are fundamental, not the limitations; and it is the duty of all courts in the land to guard and defend these rights jealously.[1]

Thus the rights that are guarnateed in Chapter III are fundamental not in the sense that they are based on a theory of natural law and are absolute. They are fundamental in the sense that they have been incorporated in the fundamental law of the land—a law which can be changed according to a special procedure provided in it and can be enforced by the courts. They are fundamental because every citizen is in a position to claim these rights and because they are binding upon every authority which has got either the power to make laws or the power to have discretion vested in it. They are binding not only on the Central Government, but also on State Governments, the District Boards, the Municipalities, the Village Panchayats and Taluk Boards.[2] They are fundamental because they emphasise the fundamental unity

1 *Ram Singh vs. The State of Delhi and Another* (1951) S.C.R. 451 Cf. Dr. Ambedkar : Constituent Assembly Debates Official Report Vol. VII No. 1. 4th Nov. 1948, p. 4. "What the Draft Constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of Police power, it permits the State directly to impose limitations upon the fundamental rights. There is thus no difference in the result. What one does directly the other does indirectly. In both cases, the fundamental rights are not absolute".

2 Constituent Assembly Debates Vol. VII No. 13-25th Nov. 1948, p. 610.

of India—the idea that the whole of the Indian Union inspite of its being divided into a number of States is really one unit so far as the citizens of the Union are concerned. All the citizens have the same privileges and the same facilities for moving into any part of the territory and they can reside or carry on business anywhere they like; and no restrictions either inter-state or otherwise be allowed to set up in these respects between one part of India and another.[1] They are not fundamental in the sense that they are immune from constitutional amendment. The terms of Art. 368 are perfectly general and empower Parliament to amend the Constitution without any exception whatever.[2]

CIVIL LIBERTIES AND THE ROLE OF THE JUDICIARY

Thus seen, the fundamental [illegible] be modified by the Parliament, [illegible] by the Constitution. They are [illegible] the general public and safety of the State. But who has to judge whether a citizen has overstepped the limits so as to endanger the safety of the State? One answer is the judiciary; the other answer is the Legislature.

[illegible]

will of the entire community. As Mr. Nehru put it, 'If we go wrong here or there it can point it out, but in the ultimate analysis, where the future of the community is concerned no judiciary can [illegible]

[illegible]

the influence of the ordinary legislation and [illegible] (which in a democracy is nothing beyond one political party) is to judge finally, when these rights, "so sacred on paper and glorified as fundamental" are to be extinguished, these freedoms be-

1 *Mukherjee J. A. K. Gopalan v. The State* (1950) S.C.R. 88.

2 *Shanker Prasad Singh Deo and others vs. The Union of India and others,* (1952) S. C. R. 89, 106.

3 C. A. Debates, Vol. VII, No. 17, 1st Dec. 1948, p. 728.

4 *Ibid.*, pp. 712, 729, Vol. VII No 18 p. 750 "You are diluting these rights with the result that nothing remains", p 764. What had been given by the right hand has been taken away by the left".

5 *Ibid.*, Vol. IX No. 31, 10th Sept. 1949, p. 1195.

come illusory.[1] It my not always happen that those who would sit in the legislatures are real representatives of the people, or, at any rate, would impose only those restrictions which may be truly reasonable.

Now, in the Indian Constitution, a middle position has been accepted. One view expressed in the Constituent Assembly was that no restrictions should be placed on the fundamental rights and the Legislature should not be empowered to abridge them. The Judges would, in course of time, do the needful. The other view was that our economy being backward, social structure being feudal, the state being infant and parliamentary democracy based on adult suffrage being a new experiment, it should be ensured that the State continues to function un-impaired and that the Legislature must have the power to place restrictions upon the fundamental rights in the collective interest of the State. The framers of the Indian Constitution chose the golden mean of providing a proper enumeration of those rights that are considered essential for the individual, and at the same time, putting such checks on them as would ensure that the State and the Constitution continue unhampered and flourish.[2] No set of rights can be regarded fundamental which stand in the way of the common good. The framers were aware that economic development in the new India would necessitatestate intervention and that to check the activities of the extremists from the Right and the Left drastic State action would be required.[3] For these reasons the rights were qualified and some of the qualifications have been so sweeping that "they appear to give even exclusive protection to government."[4]

In actual practice, the judiciary has been developing and interpreting these rights within limits alluded above. On the one hand, various parts of the preventive detention legislation have been declared void, and, on the other a number of progressive social and economic measures have been upset. In some cases the Parliament has amended the Constitution to put it in line with their social and economic attitudes and policies as was done in 1951 and 1955.[5] The Judiciary in India has a limited job. Under Article 27, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the Indian Constitution contains an express provision for judicial review or legislation as to its conformity with the Constitution unlike in America where the Supreme Court has assumed extensive

1 *Ibid.*, Vol. VII, No. 17, Dec. 1, 1948, pp. 733-734.
2 *Ibid.*, Vol. VII, No. 18, 2nd Dec. 1948 p. 771.
3 *Ibid.*, Vol. IX, No. 31 *Op Cit.*, pp. 1193-1196 Vol. VII No. 18, p. 761.
4 W. H. Morris Jones. India's Constitution after Three years, *The Listener* June 25, 1953, p. 1099, of C.A Debates, Vol. VII, 13, p. 774. "No Liberty has been considerably narrowed down. It is just like the narrowing of the size of a temple as a consequence of its main entrance being made too large during the process of constructing the temple.
5 The First & the Fourth Constitution Amendment Acts.

power of reviewing legislative Acts under cover of the widely interpreted "due process" clause in the Fifth and Fourteenth Amendments.[1] The debate on this matter in the Constituent Assembly raised some of the most interesting Constitutional points. It would be noticed that the question of "due process" raised the question of the relationship between the legislature and the judiciary. We have said above that in India the authority and the power to judge what would be the social and economic policy of the State and to what extent the range of the fundamental rights of the individual would be affected,
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words
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more specific.[2]

On the one hand, it was argued that if the words "according to

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has been complied with, the judges cannot interfere with any law which might have been capricious, unjust or iniquitous."[3] It was passionately pleaded that there must be the right of a citizen to go to a court to prove that the ground on which he has been

of these words would constitute "a very salutary check on the arbitrary exercise of any power by the executive, and that in times of emergency the executive could easily get the necessary powers from the Legislature. On the other hand, it was argued that in the United States, the Supreme Court has not taken a consistent view of "due process". Justice Holmes took a view favourable to social control. There were other Judges of a Tory complexion who took a strong view in favour of individual liberty and private property. It was as
a great handicap of
the country, the w

In every federal constitution a law made either by the Central Legislature or by the Legislature of a constituent state is subject to the examination by the judiciary from the point of view of the competence of the legislature making the law. The "due process" clause gives the judiciary the power to question the law made by

1 *State of Madras* vs. *V. G. Rao* (1952) S.C.R. 597.
2 C.A, of India, Draft Constitution of India, 1948, p 8.
3 C.A. Debates Vol. VIII No. 20, 6th Dec. 1948, p. 342.
4 *Ibid.*, p. 854.
5 *Ibid.*, p. 825.

the legislature on yet another ground. That ground is, whether the law in question conforms to certain fundamental principles relating to the rights, or whether the law is good law. If it is not, it will be declared void. Thus the Assembly found itself in two difficult situations. One was to give the judiciary the authority to sit in judgment over the will of the legislature and to question the law made by the legislature on the ground that it was not good law. The other was that the legislature might be trusted not to make bad laws. On the one hand, there is the possibility of a legislature packed by party men making laws which may abrogate or violate what may be regarded as certain basic principles affecting the life and liberty of the individual. On the other hand, it is difficutt to see how five or six gentlemen sitting in the Supreme Court can examine laws made by the Legislature and guided by their indvidual conscience, bias, prejudices, social and intellectual climate and experience be trusted to determine which law is good and which law is bad.[1] The Indian Constitution, therefore, adopts the middle course. The "due process" was replaced by "except according to procedure established by law."

Thus, even though the Judiciary in India cannot declare a law void on the ground that it is a bad law, it can certainly declare it void on the ground that in enacting it the State has transgressed the limits the constitution imposed on it. Within this limited sphere the Supreme Court has been assigned the role of a sentinel. The position of the Supreme Court was thus described by Mr. Justice Bose in *Ram Singh* vs. *the State of Delhi and another*. "It is our duty and privilege to see that rights which were intended to be fundamental are kept fundamental and to see that neither Parliament nor the executive exceed the bounds within which they are confined by the constitution when given the power to impose a restricted set of fetters on these freedoms, and in the case of the executive, to see further that it does not travel beyond the powers conferred by Parliament. We are here to preserve intact for the peoples of India the freedoms which have now been guaranteed to them and which they have learned through the years to cherish, to the very fullest extent of the guarantee, and to ensure that they are not whittled away or brought to nought either by parliamentary legislation or by executive action"[2]. With these notions of its role, the Supreme Court has exercised a vigorous judicial independence.

REALIZATION AND ENFORCEMENT OF RIGHTS

The rights which are regarded basic to man's freedom presuppose the existence of certain conditions in which alone they

1 C.A. Debates, Vol. VII No. 25, 13th Dec. 1948, pp. 1000-1001.

2 Also see *State of Madras* vs. *V.G. Rao* (1952) S.C.R. 597. "While the Court naturally attaches great weight to the Legislature's judgment, it cannot desert its own duty to determine finally the constitutionality of an impugned article."

can be realized. In the absence of those conditions even the most perfect machinery for their enforcement cannot deliver the goods. Professor Laski[1] has menioned three such conditions—(a) a decentralized state, (b) advisory bodies which the State must consult before decisions are taken, and (c) the limits on the power of the State to intervene in the internal life of other associations. The first implies an effective local government if nothing else; the second involves at least the organised and open consultation of all interests by the State before a decision is taken; the third refers to the need of unhindered functioning of the many other associations which are as important as anything else. Most of our rights, for example, will remain a dead letter if these associations are interfered with by the State. If I have the right to freedom of worship, I must have the right to join the Church of my own choice; if the State were to regulate the Church, my right to free worship is violated. The problem of relation between the state and other associations raises some of the most fundamental questions of comparative Government. Pluralism is a vigorous attack on the monist theory of Sovereignty. The 19th Century individuals wanted to limit the sovereignty of the State in the interest of the individual liberty and the rights of man. They argued that the State was an organization which, if it was necessary for the protection of the natural rights of men, was also a danger to these rights on account of the power at its disposal. Herbert Spencer wrote a book named "State versus man" and argued that the State was a potential enemy of human liberty, and consequently, was to be always kept under guard. The role of voluntary associations had, however, brought a revolution in the ideas of individual liberty. No more do we believe that every kind of organization is essentially opposed to individual liberty. On the other hand, we have come to believe that individual liberty is possible only in a life organized through various associations. Thus the antithesis between man and society or man and the State has disappeared. Now the rights of the associations require to be protected against the almighty State and not the rights of an individual as such. The rise of these associations has, therefore, led to a demand for the limitation of sovereignty of the State or even in some extreme cases, to the surrender of the entire sovereignty of State.

Professor J. D. Mabbott of Oxford has stated four possible views of the relation between the State and other associations.[2] The first, he calls as Abstract Monism which regards the existence of other associations as a sign that the State is lacking in Unity, its practical corollary being their suppression by force if necessary. The second is Concrete Monism. It admits the value of functional associations but regards them as part of the State, and its practical outcome is complete State control of their constitution

1 *Grammar of Politics*, pp. 132-134.

2 J. D. Mabbott's : *The State and The Citizen* (Hutchinson's University Library, (1947) pp. 112.

and activities. The third view is Political Pluralism, which admits the necessity of the other associations and regards the State as a particular association with no superior value or status. The fourth is an extreme type of Pluralism which maintains the need of associations with special functions but can find no special function for the State. Its practical application would be the abolition of the State and the transfer of all its functions to other associations Thus Pluralism is a way of looking at the relationship between the State and other associations. As the name suggests, pluralism believes in plurality of sovereignty.

In fact the theory of the rights of the individual will not make such sense unless the individual is permitted to form numerous associations to fufil his numerous needs. In the nature of things, human life is multi-sided and in each aspect of his life man finds himself in an association. In this sense, the Monistic theory of Sovereignty is incorrect in that it holds that the various non-political associations are created by the State and are dependent for their continued existence upon the will of the State and derive their powers from the State. On the contrary, if human nature is multitudinous and associations arise as a result of this, it follows that their birth is as natural and spontaneous as that of the State and that, therefore, their essential functions in society are idependent of State determination. Historically such associations and groups have arisen in all countries and in all times. Legally, these associations have their inherent laws. Practically, society has become so complex today that the State cannot do full justice to all its needs. As one authority has put it. "Today, we have no juridical sanctions through which to determine relations between employers or employees and the public. The State cannot establish these principles and sanctions. Economic life is too specialised to be reached by the State. Activities of any given profession can be regulated only by a group near enough to that profession to be acquainted with its functions and needs. The professional groups must be re-established both as basis for political representation and as s
divisions have lost
replaced by vocati
the authorities of social interest. For the intermittent and the indirect actions of the State there must be substituted the more direct and constant control, which the professional groups and associations can supply."

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to form their own asso
fundmental rights and
activities as they think
interest being stifled under the dead weight of majority opinion unless dissidents of every sort could organise their voice to be heard. Through voluntary associations, as Prof. Peters writes "individuals

1 *Ibid.*, pp. 112-113.

millions not directly involved. That makes the case for compulsory arbitration a very strong one.

It follows, then, that the State assists these groups and associations by giving them legal recognition and imposes on them obligations and duties in its capacity as the umpire. There will have to be the necessary adjustment between the comprehensive character of the State, which has to serve the public good and the numerous associations, which are formed to serve the sectional interests. The State, of course, has evident advantages over other forms of organizations. "Wherever there is a case for a uniform standard of service, as with the relief of property, or whenever a service can be administered more efficiently and economically on a large scale or on a territorial basis, such as social insurance and fire services, or especially if it is intended that the cost of the service should be spread unevenly so as to effect a redistribution of income, the state, having compulsory and universal jurisdiction within its territory, has an advantage over other associations. Again, the social stigma attaching to 'charity', humiliating the recipient and restraining many in genuine need from seeking it, does not seem to attach to state administered benefits, especially if, as with free education and school milk, it is received as of right, as part of a universal service without means test."[1]

We have now some idea of the basic conditions in which rights can be realized. The *sine qua non* of these conditions is the existence of democratic institutions, which constitute a check on the abuse of authority by those who may control power at a given moment. This would also involve an educated, well-informed public opinion, otherwise majority rule can easily degenerate into the rule of the mob. Nothing can be more dangerous than the

vigilance is the outcome of education and leisure and these proceed from an economic system which is equitable. These elements will create the ideal climate for a theory of rights which can protect the individual, the social, economic and cultural groups, and the community. Today, of course, humanity itself is threatened by a thermonucl
negation of rights in practice.
not merely the law that goes to
it is also the rights. But war obviously is a situation which is created by forces over which one state may have little control.

1 *Ibid.*, pp. 290-291.

A valid theory of rights would demand from the state protection against both kinds of interference. So far as protection against other individuals is concerned, the very purpose of the state is to act as an arbiter in order to adjust man's relations to his fellows. This is commonly accepted. The alternative would be anarchy. The state, in order to protect these rights from encroachment by other individuals must make the law definite, so that the average citizen can understand his duties and obligations clearly. If this is not done, the state will fail to perform its duty in protecting rights. Then, the rights also must be made definite and the govern- ... must be made absolutely certain. ... all classes in the state. In short, ... and equality before the law represent the scope of activity of the state with regard to the protection of rights of an individual against other individuals and associations.

But so far the state was not a party to the dispute; it was only an arbiter. More difficult would be the situation when the rights are infringed by the State itself. What can be the machinery ... the scope ... ral agree- ... freedom, family and property of the individual—are inalienable. This is true of Soviet and non-Soviet Constitutional theory. There are, however, basic differences in the machinery created and the procedures applied to ensure observances of these rights, in particular ...

... to the individual; second, it may be exercised by the state itself; and third; it may be entrusted to a third independent body. The first possibility would amount to individualist anarchy; the issue lies between the two latter alternatives. By and large, a third independent body—the Court—is considered to be the proper organ to solve such issues in democratic constitutions. A different a... Soviet ... society ... body, ... to thei... fore, essentially no difference, according to Soviet theory, whether the body entrusted with the protection of individual rights is the State or a third organ like a court. In all cases it will serve the interests of the ruling class and act to the detriment of the suppressed classes. Which organ is entrusted with the protection of the rights of the individual is, therefore, it follows, a question not of principle but of expediency.

The democratic theory insists that all the state organs—the Legislature, the Executive and more than these the Judiciary be

made responsible for the enforcement of fundamental rights even against the state.
is to create and m
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the recognition of his civil and political rights, but also the establishment of the social, economic, educational and cultural conditions which are essential to the full development of his personality. These conditions can be and must be created by the legislature and to do this, the legislature must be so organised that the people, without "discrimination among individuals, may directly, or through their representatives decide on the content of the law." The legislature must insist on the exclusive power of enacting general principles and rules as distinct from detailed regulations thereunder. The Constitution must provide for control by the representatives of the people over the exercise by the Executive of such subordinate legislative function as are necessary to

safeguards contained in the constitution should not be indirectly undermined by devices which leave only the semblance of judicial control.

Earlier in this chapter we have referred to the Universal Declaration of Human Rights and we pointed out that this declaration goes beyond the traditional civil rights by including social, cultural and economic rights, such as, the right to work, to social security, to an adequate standard of living, to education, to rest and leisure, to form trade Unions, and to equal pay for equal work. It conceives man as born not only with certain inalienable rights but also with certain inalienable claims on society which must not be denied. But there is a far more important direction in which the Universal Declaration of Human Rights differs from the previous declarations of human rights. It has a wider reach than the English Bill of Rights, the American Declaration of Independence and Bill of Rights, and the French Declaration of the Rights of Man. Each of these was the product of a distinctive national outlook, whereas the Universal Declaration was patently international in character and scope. Now this introduces a new factor in the theory of rights, in that, the nations accepted an inter-
erto the authority to recognise or to
ested exclusively in the nation. But
the new principles of responsibility
ne enforcement and maintenance of
members.

This means that every legislature in a free and democratic society must devise ways and means to implement the Declaration through international or regional agreements, say, on the pattern of the European Convention on the Protection of Human Rights and Fundamental Freedoms signed in Rome on November 4, 1950 or otherwise. But such agreements, to be of any real value,

must provide an opportunity of appeal to an international body for a remedy against denial of the rights contained in the Declaration. Thus it has happened that a valid theory of fundamental rights subjects the legislature of a state to international control. And it is not merely the rights of the individual that are so protectted; it is also the national, ethnical or religious group whose right to exist is to be safeguarded. This is the import of another striking document which the U.N. General Assembly adopted in the same year (1948), *i.e.*, the Genocide Convention which declares genocide a crime under international law, and those guilty, whether rulers, legislatures, public officials, or private individuals are to be punished by tribunals within the national state where the crime had been committed or by international tribunals organized to deal with the crime. This convention was adopted as a result of the mass extermination of the Jews by the Germans, a new and fearful form of cruelty which the United Nations resolved to outlaw.

Thus the legislature of a democratic state must endeavour to implement those principles, and this not only in relation to their own countries but also in relation to any territory under their administration or protection. Steps must be taken to abrogate any existing laws which are inconsistent with these principles. But it is not the legislature alone which has a duty to protect the rights. The executive has an equally important function in making the fundamental rights effective, for, it is the Executive which has to provide an effective government capable of maintaining law and order and of ensuring adequate social and economic conditions of life for society. This is possible if the magistracy and the police become the instrument of a Welfare State. Instead of laying stress on the investigation of crime which has been committed, the emphasis must be on prevention of crimes. Now this involves an educative
information, direction
and planned basis. Th
of detention is carried
of fundamental rights assumes that man is basically good and hence deserves freedom. Intended crime is, therefore, comparable to the symptom of disease while committed crime is the disease itself. The purpose of the Executive is, therefore, to ensure healthy growth of the community. Attention must be given to that section which is maladjusted and is likely to break the laws. The hospital and the sanitoria are maintained to cure the unfit. On the same reasoning the criminals or the socially unfit are to be made fit, and not liquidated. The methods of investigation used by the Police must, therefore, be dynamic, scientific, and humane. The law of evidence must be and should be so framed that the magistracy may function properly.

But this is not enough. The executive must be efficient, resourceful, honest and invested with adequate powers. These powers may be abused. One check is the existence of a democra-

tically elected legislature which cannot be manipulated by the Executive either in the manner of its election or otherwise. But neither the Executive, nor the Legislature, howsoever, vigilant, able and resourceful they may be, will be a sufficient safeguard of fundamental rights and of those conditions which these rights presuppose, unless there is a judiciary which can discharge its duties fearlessly. The legislature may, and indeed in modern states has to, delegate power to the Executive or other agencies to make rules having a legislative character. On the one hand, the grant of such powers should be within the narrowest possible limits, and should carefully define the extent and purpose of delegated legislation and should provide for the procedure by which it can be brought into effect. On the other, delegated legislation must never be used for abrogating fundamental rights. To ensure that the extent, purpose and procedure appropriate to delegated legislation are observed, it is essential that it should be subject to ultimate review by a judicial body independent of the Executive. The acts of the Executive which directly and injuriously affect the person or property or rights of the individual, should be subject to review by the Courts.

Now, the judicial review of acts of the Executive may be secured either by a specialized system of administrative courts or by the advisory courts. In our view, where the former do not exist, it is necessary that the decisions of adhoc administrative tribunals and agencies, if created, should be subject to ultimate review by ordinary courts. And since this supervision cannot always amount to a full re-examination of the facts, it is essential that the pro[illegible]
be based on [illegible]
heard if poss[illegible]
governing the hearing, to adequate representation, to know the opposing case and receive a reasoned judgment. Adequate representation must normally include the right to legal counsel. Any citizen suffering an injury as a result of illegal acts of the Executive, should be able to have a remedy either in the form of a protection against the State or against the individual wrongdoer. Judicial review of delegated legislation, may be supplemented by procedure for supervision by the Legislature or by a Committee or a Commissioner of the Legislature or by other in-[illegible]

by the Executive after it has occurred, it is a sound principle to institute appropriate antecedent procedures of hearing, enquiry or consultation through which parties whose rights or interests will be affected may have an adequate opportunity to make representations so as to minimize the likelihood of unlawful or unreasonable executive action.

Sound Judicial safeguards require a sound criminal process, and a correct judicial organization, for, the rights of the accused

in criminal trials, however elaborately safeguarded on paper, may be ineffective in practice unless they are supported by institutions, the spirit and tradition of which limit the exercise of the discretions, whether in law or in practice, which belong in particular to the prosecuting authorities and to the police. Earlier, we have stressed the need of the certainty of law—more so in criminal law. Certainty cannot exist in the criminal law if the law or the penalty for its breach is retrospective. There is hardly any controversy among thinkers on Democracy about the principle of presumption of innocence in favour of the accused. The power of arrest must be strictly regulated by law and the arrested person should immediately be told the ground of his arrest, and should be informed that he has a right to defend himself with the help of a lawyer of his choice. He should be brought to trial at the earliest. Preventive Detention, except in the case of general national emergency, is entirely undemocratic, for it is, in practice, liable to be misused. The accused must have a full opportunity to prepare his defence, to produce witnesses in his support and to cross-examine the witnesses produced by the Prosecution. It is absolutely essential that the Prosecution must not be motivated by a craze for securing conviction but by a desire to place all the evidence before the Court to enable it to administer justice. In case the Prosecution has some evidence favourable to the accused which it does not propose to use, it should even put such an evidence at the disposal of the accused sufficiently in advance. No one should be compelled to incriminate himsef; postal or telephonic communications should, ordinarily, not be intercepted; and a search of the accused's premises without his consent should only be made under an order of an appropriate judicial authority. Evidence obtained in breach of these rights should not be admissible against the accused. Criminal trials must be held in public and the exceptions, if any, must be prescribed by law and their application to a particular case must be made justifiable. Press must be admitted to the trial provided that nothing should be published which is likely to prejudice the fair trial of the accused. None, of course, should be tried for the same offence again. Every conviction and sentence or every refusal of bail should be challengeable to a higher court. Punishment must not be cruel and brutal and must be reformative in character.

Thus, while the judiciary must be independent—independent of the Legislature, the Executive and of the tumultuous crowd, a judge is not entitled to act arbitrarily. We will discuss the Judiciary in a separate chapter. Here it is enough to say that the Judges must be adequately paid; their salary must not be changed to their disadvantage during their term. They must be appointed on the basis of merit and they should not be arbitrarily removed. A free, organised legal profession, fearless, honest and learned in law, is as essential as an impartial judge. The lawyer, subject to his professional obligation to accept briefs in appro-

priate circumstances, should be free to accept any case offered to him, and must be fully prepared to defend persons associated with unpopular causes and minority views with which they themselves disagree. And once a lawyer accepts a brief, professional ethics requires that he must never relinquish it to the detriment of his client without good cause. It is the sacred duty of the lawyer to press upon the Court any argument of law or of fact which he may think proper for the due presentation of the case by him. Finally, for any valid theory of rights, it is absolutely essential that their infringement must be made illegal for the rich and poor alike, and therefore, equal access to law is basic to it. It is, therefore, vital, to provide adequate legal advice and representation to all those threatened as to their life, liberty, property or reputation, who are not able to pay for it. But this issue is connected with the question of adequate remuneration for the services rendered. The primary obligation rests on the legal profession to sponsor and use its best effort to ensure that adequate legal advice and representation are provided. An obligation also rests upon the state and the community to assist the legal profession in carrying out this responsibility.

Thus the Legislature, the Executive, and the Judiciary, can safeguard the rights effectively, if they function properly. The system of checks and balances and separation of power, can go to some extent in protecting civil rights. For example, the American President's power to veto a law or the Senator's right to reject a treaty might be used to protect the civil rights of individuals against governmental encroachment. But such devices can be effective in guaranteeing the civils rights of the indiviauals against interference by particular organs of government. Against the sovereign power of the state, these devices will hardly be of any avail. The state may protect my rights through its law against interference by other individuals, or through its constitutional system, against interference by any single organ of government. But in practice, it has the power to destroy or limit these rights. As one authority has put it. "The liberty of the individual is defended against the government by the sovereign power of the state which makes and maintains and can change the government, and by the same power, through the government, against encroachment from any other quarter. Against that power itself, however, there is no defence".[1] Thus whether rights are written or unwritten, whether there exists separation of Powers or not, in the ultimate analysis the supreme safeguard of rights is a vigilant, educated and well organised public opinion. That will be the measure of your freedom, the test of the effectiveness of your rights. The real guarantee of individual liberty is a public opinion that is tolerant and liberal and that is adequately reflected in the actions of the governments. That takes us back to the Democratic form of State where people have freedom as well as authority.

1 Gettell : *Political Science*, p. 155.

The way to resolve the conflict between liberty of the People and authority of the State is to place the supreme power in the hands of those whose freedom is to be guaranteed by that power—the hands of the People. The people may use franchise, constitutional guarantees, representative legislature, free Press, active Local self-government, referendum, an independent judiciary to realize their freedom and establish their authority so that the conflict between "freedom" and "authority" is eliminated. It is the freedom of the people that is to be ensured; it is the authority of the people that alone can ensure it. Excess of freedom leads to anarchy, excess of authority to despotism. Each community has to work out its own adjustment according to its lights. In different states, the level of adjustment will be different. This will be clear by a study of some leading countries in the world.

FUNDAMENTAL FIGHTS IN THE U. S. S. R.

The Soviet theory of fundamental rights subordinates the individual rights to the rights of the working class and of the Soviet State. It is based on the premise that the most important right is not the right to freedom, but it is the right to live and the right to earn a livelihood.—since the political system is based on the ideal of a classless society, the right to freedom of speech and expression loses its edge. All politically conscious pepole must necessarily be Marxists, and all active people must be members of the Communist party of the Soviet Union (C. P. S. U). They will have absolutely no need of organizing other political parties or associations and no occasion to criticize the official policies once they have been accepted by the party elite. Right to property is rendered meaningless for all means of production are socially owned just as all means of propaganda are state-owned and state-controlled. If religion is the opium of the masses and if the Church has historically been the centre of reaction, the right to freedom of worship disappears. The Soviet citizen would have the right to carry on anti-religious propaganda. According to the Soviet theory these rights are the outcome of a class society and are the logical deductions from exploitation of people. Chapter V of the Soviet Constitution lays down the fundamental rights and duties of the citizens, Chapter I is devoted to the structure of the U.S.S.R. and mentions such rights as the right to personal property, the right to inherit personal property and the right to payment for work in accordance with its quantity and quality; Chapter IX records the right of citizens to defence in Court, and Chapter XI relates to the electoral system and

[illegible]

freedom of assembly, freedom to organize meetings, street processions and demonstrations, and societies of working people, electoral rights, equality of citizens, and freedom of conscience.

Socio-economic rights include the right to work, rest and leisure, the right to maintenance in old age, sickness and disability, the right to personal property, to inherit property and the right of collective farm households to have their own holdings. Cultural rights provide for education. The Constitution also guarantees personal freedom, inviolability of the person, home and privacy of correspondence. The citizen in order to be entitled to thees rights, has to carry out the fundamental duties laid down by the constitution and these include the duty to abide by the constitution, to observe the laws, to work according to his ability, to maintain labour discipline, to perform public duties honestly, to respect the rules of socialist intercourse, to safeguard and fortify socialist property, to serve in the Armed Forces and to defend the socialist fatherland. These duties, subject to the varying age and nature of work of different people, are equally binding on all citizens. They are strictly of a personal character and they concern all spheres of economic, governmental, political and cultural life of the country. Their performance is supervised by the corresponding state organs and their negligence or violation is punished by the State. Finally, under Article 129 of the Constitution the Soviet State affords the right of asylum to foreign citizens persecuted for defending the interest of the working people, or for scientific activities, or for struggling for national liberation.

Now, [illegible]
enforced ? [illegible]
economic: [illegible]
speaking, [illegible]
necessary for the practical exercise of these rights which apply to all citizens equally irrespective of social origin and status, nationality and race. The state adopts concrete measures to implement those rights—measures of economic, organizational, cultural and educational character. Thus the right to work is ensured by the socialist organization of the national economy, the steady growth of the productive forces of Soviet society, abolition of unemployment and elimination of crises. The dismissal of worker, except in specific cases, is prohibited by law. The state takes care to make labour [illegible]
working conditions and to [illegible]
right to rest and leisure is en[illegible]
[illegible] al vacations with full pay
[illegible] alth resorts, clubs, theatres,
[illegible] anitoria. The right to main-
[illegible] d by free medical service for
every citizen. The right to education is realized by making education free and compulsory, and by providing stipends to [illegible]

streets and other material requisites. The right to freedom of speech is exercised through discussion of important laws, scientific discussions, and debates on the reports submitted by deputies. Women's equality with man is recognised by law, and in practice they participate in all branches of State life and this is ensured by state aid to mothers, maternity leave with full pay, and nurseries.

Then, there are legal or constitutional guarantees of these rights. Under the Soviet system, as we pointed out earlier, there is no special importance attached to an impartial, independent tribunal as the arbiter between the individual and the State. The Soviet theory is, that there can be no impartial, or independent organ in a society unless it is classless. In a Capitalist society, the so-called independent courts are merely the spokesmen of the ruling capitalist class. In the Soviet system, the ruling class is the proletariat, and justice is socialist justice. Thus it makes essentially no difference, according to Soviet theory, whether the body

[illegible]

vis-a-vis the State : (1) the Court Channel, (2) the Administrative Channel, (3) the Party Channel and (4) the Procuracy. The task of the Courts is to protect the political, personal and property rights and interests of the citizens of the U.S.S.R. in accordance with civil and criminal procedures. The civil procedure is open to a citizen who seeks redress from the State for violation of his rights committed by State officials in performing official duties. But the benefit of this extends only to those violations which are expressly enumerated in the law of the embezzlement of deposited [illegible] been established beforehand by [illegible] the practical value of civil pro- [illegible] More useful is the protection in civil proce- [illegible]

[illegible]

of functions intended to protect the right of the individual against the State are assigned to the Procuracy and not to the criminal courts. The Procuracy and not the Court has the right to permit an extension of the maximum period of investigation established by law. The seizure of correspondence and its extraction from postal and telegraphic establishments can be carried out with the sanction of the procurator or by decision of the court. Procuracy can also order and execute searches. Under the Law of U. S. S. R. (1959), the powers of the investigating officers have

been enhanced[1] and the accused has been given some guarantees. Under the new law, the investigating authorities and the courts are forbidden to place the onus of proof on the accused and the conclusions of the investigating organs, the procurator and the courts must be founded on facts. It enumerates the rights of the accused—to know the grounds of accusation, to submit evidence, to lodge appeals and to defend himself with the help of a lawyer from the moment the completion of the investigation is announced. A person can be arrested on suspicion but the procurator has to be informed within 24 hours, and he must, within 48 hours, sanction the continued detention of the accused or order his release. When a person is detained and a charge is made, it must be made within 10 days. The person detained has a right [illegible] of theft or hooliganism is given the procedural rights and is made a participant in a criminal case as an equal and is no longer a mere witness. The new Law on the Fundamental Principles of Criminal Legislation of the U. S. S. R. and the Union Republics has removed the rules regarding analogy which were in force since 1922. Under these rules, when some crime was committed, which was not covered by the existing law, punishment was awarded by applying the provisions of criminal law relating to similar offences. It also lays down that actions committed in necessary defence or extreme necessity are not only not punishable but are not offences. The minimum age of criminal liability has been increased to 16. Punishment has been made reformatory and the [illegible] behaviour. [illegible] conviction, [illegible] Soviet or its [illegible] crime by the Law of Criminal Liability for State Crimes. Criminal liability has also been established for a terrorist act against the representative of a foreign state in order to provoke war.

All these changes in the Soviet system are the outcome of the social changes in the last few years in the U. S. S. R. In any socialist country like the U. S. S. R., criminal law would always occupy a place different from what it does in Capitalist countries. Socialism involves an extension of the domain of criminal law to new areas and as Berman has put it, "New economic crimes are created to protect socialist property, to prevent and punish the negligence[2] or wilful misconduct of state business managers."[3]

1 Y. Zaitsev and A. Poltorak : *The Soviet Bar*, p. 15.
2 See Vyshinksy : *Law of the Soviet State*, p. 50.
3 *Justice in Russia*. p. 270.

That explains why criminal law in the U.S.S.R. has been regarded, next to property law, as the most important branch in the entire Soviet legal system. That also justifies Art. 131 of the Soviet Constitution which provides for socialist ownership being treated as the sacred and inviolable foundation of the Soviet System, as the source of wealth and might of the country, as the source of prosperity and cultured life of the people. The constitution also enjoins the citizen to safeguard and strengthen this socialist ownership. Thus where state ownership of productive property is regarded as the foundation on which the whole system is built, it follows that citizens are required to observe higher standards of care about such property and punishment meted out for violations is more severe.[1] Under Art. 3 of the Fundamentals of Criminal Law, a crime is committed only when a person committing it does it with premeditation and negligence. But in safeguarding State Property mere carelessness is punishable. In recent years there [illegible]

an unusual stress on the importance of criminal law. The reasons were compelling. The near war situation justified this. Crime was defined in the Penal Code of 1926 as a "socially dangerous act or omission which threatens the foundations of the Soviet political structure." The State, therefore, had to be equipped to meet the attack on its foundations both from inside the country as well as from outside. Moreover, the State had an exceedingly important role to play—that of remaking the conscience of the people. As Chkpikvadze put it, "The rules of Soviet Criminal law, which is an important part of Soviet Socialist law, regulate the struggle against crime. The Soviet State combats crime and other antisocial acts, above all by persuasion and by extensive educational work."

[illegible] changing—progress [illegible] ıce, and the definite [illegible] The continuance of State power led to its misuse—arbitary arrests, executions without a proper trial and a virtual reign of terror. The need for legality became paramount and the reform of criminal law and procedure [illegible]

of analogy *etc.*—degenerated. In many cases, the Cheka assumed not only the right of final decision, but also the right of control over the court and its activities acquired the character of brutal and merciless repression and complete secrecy. Stalin's concept of the

[1] Cf. Mannheim : *Criminal Justice*, p. 270.

"enemy of the people" could be applied to anybody for his "liquidation." In dealing with such "peoples enemies" the only proof of guilt required was the confession of the accused, which was in fact extorted through physical pressure. Similarly "the doctrine of analogy" which at one time was useful (for it could assist the court

a special commission has been set up to supervise its activities. Since 1953, no extra-judicial body has been empowered to arrest or imprison any one and none can now be punished without the commission of a crime established in a court. Today, therefore, none can be arrested merely because he is considered socially dangerous and none can be punished except according to the procedure established by law. We have already referred to the abrogation of the analogy doctrine. All this indicates that in recent years there has been a fundamental change in the basic purpose of the Soviet theory of criminal law, and the change has an important bearing on the exercise of fundamental rights of the Soviet citizen. Today, there is much greater emphasis on the protection of the rights and personality of the citizen *vis-a-vis* the right of the law to protect socialist property.[2] Article 32 of the Principles of Criminal Law breaks a new ground inasmuch as it states that the Court should take into account the personality of a citizen before passing sentence. We have already referred to other reforms such as the benefit of defence Counsel, the requirement of charges to be communicated to the accused, his right of appeal, burden of proof placed on the state and the reformatory punishment. It must be emphasised that under articles 75-76 of the Principles of Criminal Law, the purpose of punishment is stated to be not only a penalty but also reforming and re-educating those convicted as well as the prevention of commission of new crimes by both convicted persons and by others. The purpose is not to inflict physical suffering or belittle human dignity. Long term imprisonment, for that reason, has been

like treason, espionage and sabotage and was extended in 1960 to cover cases of embezzlement of State property, counterfeiting of coins or speculations in currency when carried on as an occupation.

However, there are a few situations even today which can be abused as instruments of injustice. For example, there is the recent measure adopted in 1960 by many Republics in the U.S.S.R.

1 Fundamentals of Soviet Law, p. 401.
2 Schlesinger, 12 *Soviet Studies*. p. 459.

[illegible]

be obligatory for him to work. Now, this very much looks like an extra-legal procedure for punishment. The period of banishment is too long and if allowed to function without any judicial supervision, this procedure may become a weapon to harass citizens and rob them of their fundamental rights. The Soviet bar, again, cannot be as effective as in states which follow the pattern of parliamentary democracy. There are about 15,000 lawyers in the U. S S. R. To a lawyer, a minimum income of 600 roubles per month is guaranteed and in most cases the fees are fixed by the executive Committees of the Bar Association and the Ministry of Justice.[1] These conditions obviously are hardly conducive to an effective bar.

T[illegible]

of law also against inexpedient acts and unsatisfactory working practices of administrative authorities. It is not necessary that the complainant should be personally affected by such practices or acts. The number of instances through which the complaint may be pursued is also not restricted and the final instance is as a rule the Council of Ministers of the U. S. S. R. It is the duty of the organ to which complaints are addressed to examine the complaints within a specific time-limit. Sometimes the channels and procedures to be followed for a given grievance are regulated by the respective administrative organ, *e.g.* for complaints in matters of trade and sanitary inspections. But no rights are given to the complainant to enforce these rules and the procedure for complaints does not generally provide for a final recourse to the Court.

[illegible]

and the Party member is given the right to appeal in a formal [illegible]

by the Central Committee of the C. P. S. U. Under Art. 40 of the Rules of the C. P. S. U. adopted by the 22nd Congress of the C. P. S. U. on Oct. 31, 1961, it is laid down that the party Control Committee verifies the observance of party discipline by member of the C. P. S. U. and takes action against Communists w[illegible]

1 *Law In The Soviet Union* : Link, Jan. 24, 1960. p. 15.

violate the programme and the Rules of the party or state discipline or party ethics. It also considers appeals against decisions of the Central Committee of the Communist parties of the Union Republics or of territorial and regional Party Committees to expel members from the Party or impose Party penalties upon them.

Finally there is the Procuracy which was first set up in 1922 and which since then, has been supervising "the institution of a genuinely uniform understanding of legality throughout the State" irrespective of local differences and influences.[1] It is the responsibility of the Procurator to ensure that every decision that is taken is in conformity with the law and that every law is observed by all Ministries and institutions. This power is exercised by the Procurator-General both directly and through the [illegible] of sentences, judgments and decisions pronounced by judicial bodies, the legality of the execution of court sentences and the observance [illegible] detention. [illegible] guilty of cr[illegible] instruction[illegible]

[illegible] can make a complaint to the Procuracy and this right extends even to matters which do not concern him personally and if the complaint is declined by a procurator, the individual may either complain to the next higher office of the Procuracy or he may start ordinary administrative or judicial procedures if available and not yet exhausted. After the complaint has been registered and examined, a decision has to be taken within a month and it must be communicated to the complainant. Handling of complaints by lower organs is controlled by higher organs of the Procuracy. It is true that complaint by higher party and State officials, Deputies of Supreme Soviets and newspapers, *etc.*, are given preferential treatment. While during the Stalin regime, the Personality Cult permeated the Procuracy also, in recent years the situation is much better. Under the law of 1955,[3] the Pro-

1 *Rules of the C. P. S. U.* Foreign Lawyers Publishing House, Moscow 1961., pp. 19-20.

2 A. Denisov, M. Kirichenko : *Soviet State law.*, pp. 311-313

3 The 1955 Ordinance on the Supervisory Powers of the Procurator's Office which replaced the Statute on Procuracy of 1933.

curacy has been strengthened by new personnel and is fully reinsti- [illegible] power to lodge a protest against illegal orders of the administration of camps of confinement.

We may thus conclude that in the U. S. S. R. in recent years, fundamental rights have become more real. There is, of course, [illegible] l protection is reserved [illegible] are open merely to party [illegible] through administrative channels is not enforceable by the individual. The Procuracy is even now dependent on the supreme State and Party organs, [illegible] Principles of Criminal Law and Criminal Procedure (Dec. 25, 1958) bluntly declare the monopoly of Courts in the imposition of penalties and the infliction of "criminal punishment", other punishments can even now be awarded outside the courts. For instance, penalties imposed by disciplinary action can always be given in the name of social defence. Simultaneously with the reform Dec. 25, 1958, the U. S. S. R. Presidium was commissioned "to approve a list of laws and decrees which are no longer in force because of" the reform. Such a list was approved on April 13, 1959 and was then made public. One looks in vain in this list for the Act of 1934 which bestowed upon NKVD and its successor the M.V. D. the broad power to confine "socially dangerous persons" in a correction labour camp for up to 5 years and other powers. On several occasions, the Soviet high officials stated orally that the special Board which applied such confinement had been abolished. However, it was never stated that the Ministry of Interior (M.U.D.) had been deprived of such powers. The Federal M.U.D. was abolished in January, 1960, but its jurisdiction was transferred to the Ministries of the Individual Republics. On this showing, all the laws, which provided for such powers remain in the Statute Book although their application may have been shelved.

Again, the powers of the State Security Committees are yet to be legally defined. May be that these Committees continue to exercise all those powers, which at one time, were exercised by [illegible] ains [illegible] oviet [illegible] the [illegible] dual Republics continue to operate against the "Parasites", who [illegible] be deported by "Popular Judgment". Finally it may be s[illegible] mitted that, while on the Federal level, in the U.S.S.R. th[illegible]

exist only possibilities of administrative detention based on the absence of legal provisions prohibiting it and on established practices not specifically repudiated, some of the Republics have enacted Special Laws providing for exile with forced labour in administrative procedure.

PEOPLE'S REPUBLIC OF CHINA

In the Chinese Constitution (1954) the pattern of fundamental rights is much the same as in U.S.S.R. Chapter III deals with rights and duties of citizens.[1] The list of rights in China is more impressive than in the Soviet Constitution. The Constitution of China guarantees equality of citizens over 18 years of age without regard to nationality, race, sex, occupation, social origin, religious belief, education, property, status, or length of residence, except those who are insane and those who are, by law deprived of political rights. The State provides material facilities to guarantee to citizens the enjoyment of freedom of speech, press, association, assembly,

ment of these rights. Inviolability of person and of the dwelling,[3] privacy of correspondence in accordance with law, and freedom in choosing one's residence and freedom of travel[4] are all guaranteed . There are social and economic rights which include the right to work, rest and education[5] and the right to secure material aid from the state in old age, in sickness or in a state of disability.[6] Equal rights are guaranteed for men and women in all fields of state, economic, cultural, social and family life with special protection for mothers and children.[7] Provision is made for freedom of scientific, literary and cultural work[8] and protection of marriage and the family[9] and physical and mental development of the youth.[10] The right of petition and of seeking indemnity from the state and from official persons for damage resulting from transgression of law or neglect of duty is also provided.[11] Protection is given to the proper rights and interest of Chinese residents abroad.[12] The constitution also protects the right of asylum to foreigners perse-

1 Articles 85-99 deal with rights and Articles 100-103 with duties.
2 Art. 88.
3 Arts. 89-90.
4 Art. 90.
5 Arts. 91, 92, 94.
6 Art. 93.
7 Art. 96.
8 Art. 95.
9 Art. 96.
10 Art. 94.
11 Art. 97.
Art. 98.

cuted for supporting a just cause, for taking part in the peace movement, or for scientific activities.[1]

Now, these rights have hardly any practical value. They are seriously hedged in by all sorts of restrictions. In the first place, they are conditional on the performance of duties which are so sweeping in character that a citizen who were to discharge them successfully, would hardly need any rights. The Constitution (Arts. 100-103) requires all citizens to obey the Constitution and the laws, to preserve labour discipline and public order, to respect social ethics, to respect and safeguard public property of the Republic, to pay taxes according to law, to serve in the armed forces and to defend the homeland. Secondly, the whole section of the Constitution dealing with Fundamental Rights is, in practice negatived by Art. 19 under which :

"The people's Republic of China safeguards the Peoples' democractic system, protects the security and rights of its citizens, suppresses all kinds of treasonable and counter-revolutionary activities and punishes all traitors and counter-revolutionaries.

The State, in accordance with the law, deprives feudal landlords and bureaucratic capitalists of political rights for a period, at the same time it provides them with a way to live, in order to enable them to reform themselves, by work, to become citizens who earn their livelihood by their own labour."

This means that anybody who differs from the Government can be condemned as a counter-revolutionary or enemy of the people and put beyond the pale of Rights and Law. The Chinese regime is actually harsh, brutal, inhuman and dictatorial. Millions of Chinese have been murdered in cold blood without anything like a trial. Law and Justice in People's China is a mere sham. Indoctrination and brain washing, arbitrary arrests and summary executions have rendered the whole country one vast concentration camp, conducted by a Party which functions within the rigid framework of an outmoded Stalinite orthodoxy. The entire system in China is highly centralized. Not only do the Central legislative and executive organs have powers of revising and nullifying the enactments and orders of local authorities but also the principles of centralization apply in the judicial field. The hierarchy of procurators is another instrument, which ensures centralization of power and compels realization of central objectives. Nowhere does the constitution provide for any genuine local self-government and even in the case of the autonomous regions, local liberties are not fixed and unalterable, but must yield to the central authority. The centralized planning, the system of Communes, and the rigid party discipline all help the process which negatives fundamental rights of the Chinese citizens in actual practice.

1 Art. 99.

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1 Art. 99.

FUNDAMENTAL RIGHTS IN INDIA

In India, Part III of the Constitution guarantees basic rights to the citizens and aliens. This includes, first, the freedom of expression, which includes freedom of the Press. Other parts of the right to freedom relate to the right to assemble peaceably and without arms, to form associations or unions, to move freely throughout the territory of India and to reside and settle in any part of the territory and to practise any profession or trade.[1] The Constitution allows protection in respect of conviction for offences. This is covered by article 20 under which no person can be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence. Under this article, no person can be prosecuted and punished for the same offence more than once and no accused can be compelled to be a witness against himself. The former enunciates the famous principle of "double jeopardy". It is a well established principle of the British Common Law that where a person has been prosecuted of an offence by a court of competent jurisdiction the conviction is a bar to all further criminal proceedings for the same offence. However the British theory of "autrefois convict" and the U.S. doctrine of "double jeopardy" has been circumscribed in India by the provision that there should be not only a prosecution but also a punishment in the first instance in order to operate as a bar to a second prosecution and punishment for the same offence.[2] Thus the ambit and contents of this right in India are much narrower than those of the common law rule in England or the doctrine of "double jeopardy" in the American Constitution. In England or in U.S. if a man is indicted again for the same offence, he can plead his former acquittal or conviction as a complete defence. In India, to enable a citizen to invoke the protection of cl. 2 of Art. 20, there must have been both prosecution and punishment in respect of the same offence.[3]

Then, again, the accused cannot be compelled to be a witness

of a thing or document is in itself to be treated as compelled production of the same.[4] In our Constitution there is no right to privacy similar to the Fourth Amendment of the American constitution and in the absence of such a right, search or seizure is legally permissible. This, again, is a very serious limitation on Civil Liberties.

Closely connected with this, is the question of preventive

1 Art. 19 cl. (*b*) (*c*) (*d*) (*e*) (*g*), *The Constitution of India.*
2 *Maqbool Hussain* v. *The State of Bombay* (1953) S. C. R 730.
3 *Venkataraman* v. *The Union of India*, A. I. R. 1954 S C. 375.,
4 *M. P. Sharma* v. *Satish Chandra*, A. I. R. 1954 S. C. 300,

detention—the concept of detaining a person in order to prevent him from committing breach of law. Preventive Detention means three things: (*a*) that it is detention and not imprisonment, (*b*) that it is detention by the executive without trial or enquiry by a Court, and (*c*) that the object is preventive and not punitive. In the words of Lord Finlay : "as the object is precautionary, the matter is to be left to the discretion of the executive authority, which can only act on suspicion and cannot be expected in every case to have proved of no crimes committed, which will satisfy a Court of Law...... The test is a subjective one, based on cumulative effect of different ativities, perhaps spread over a considerable period." In case a crime has been committed, evidence becomes easy and necessary. But where a crime has not been committed but when there is an apprehension of the crime being committed the arrest or deprivation of liberty would in every case be based on information which may be vague and doubtful. There may be a strong probability of the impending crime but no definite evidence. In theory, therefore, the concept of preventive [illegible]

[illegible] and limitations but whatever be their range, once the state is allowed to detain a person preventively, you are opening the flood-gates of litigation which the poor cannot avail. Again, freedom does not merely lie in actual security or even in the enjoyment of certain definite fundamental rights. It lies in a conviction that as long as I do not commit a breach of law, the arms of law shall protect me. The alternative is the sword of Damocles always hanging on my head; a kind of suspended animation. Wherever there is preventive detention, there democracy may be under virtual suspension.

In India, under Art. 22 of the Constitution preventive detention under certain conditions is provided. Certain protection is given to the individual and certain protection is given to the detaining authority. As regards the former, the detenu is to be informed "as soon as may be", of the grounds of arrest; he is given the right to employ any lawyer; he has to be produced before the nearest Magistrate within a period 2 hours of the arrest. However, the protections are not available to enemy aliens or to persons arrested under any law providing for preventive detention. Thus the constitution envisages detention under ordinary criminal law and under a preventive detention law. The latter cannot authorise detention for a longer period than 3 months unless an Advisory Board consisting of persons of the qualifications of a High Court Judge has reported before the expiration of 3 months that there is, in its opinion, sufficient cause for such detention. However, the Parliament may by law, prescribe the circumstances under which, and the maximum period for which, any person may be detained.

Again, the detaining authority has been given some p[illegible] while making a detention order; it cannot be [illegible]

disclose facts which, in its judgment, are against the public interest to disclose. Of course, it has to communicate to the detenu the grounds on which the detention order has been made and has to afford him the earliest opportunity of making a representation against the order. The detention order is made if the authority making it is satisfied as to its necessity in accordance with the detention law. The past conduct or antecedent history of a person can be taken into account when making a detention order.[1] It is, however, open to the detenu to establish, if he can, that the detention order was made malafide and an abuse of powers. But the onus of proving the absence of good faith, is always on the detenu and "it is certainly a heavy burden to discharge."[2] This problem will be dealt separately in the chapter on judiciary.

A separate group of fundamental rights consists of the rights of equality covered by articles 14 to 18. Under Article 14, The State shall not deny any person equality before the law or the equal protection of the laws within the territory of India." Under other articles, discrimination on grounds of religion, race, caste, sex or place of birth is prohibited, equality of opportunity in matter of public employment is guaranteed; and untouchability and titles are abolished. The individual enjoys "equality before the law" and "equal protection of the laws", the former being a part of the British Common Law and the latter being an expression of the U.S. Constitution. If "equality before the law" is a negative concept, "implying the absence of any special privilege in favour of any individual", the concept of "equal protection of the laws" is positive in contents and implies "equality of treatment in equal circumstances.".

What are the implications of the concept of "equality before the law"? It means, first, that there would not be any special privilege by reason of birth or sex or creed or religion in favour of any person (save certain well recognised exceptions) before law. The court of justice should be the refuge of all without discrimination. It applies, second, that there should be the same sets of Ordinary Courts with the same rules of ordinary procedure available to each individual. It also means that the individual should enjoy equal protection of the laws, in the sense that identically the same rules of law should be made applicable to all persons within the territory of India inspite of difference of circumstances and conditions.[3] But while it means protection of equal laws and forbids, by implication, class legislation, it does not forbid classification which rests upon reasonable grounds of distinction.[4] It does not prohibit legislation which is limited either in the objects to which it is directed or by the territory within which it is to operate. It only requires that "all persons subjected to such

1 *Ujagar Singh v. The State of Punjab* (1952) S. C. R. 756.
2 *Ashutosh v. The State of Delhi*, A. I. R. 1953, S. C. 451.
3 *The State of Bombay and Another v. F. N. Balsara* (1951) S.C. R. 682.
4 Prof. Willis : *Constitutional Law*. p. 579.

legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed." Thus the implication is that under "equal protection of the laws", all laws may not be quite general either in their character and contents or in their application. The concept of equality as incorporated in the Indian Constitution is, thus, the concept of the 19th century police state, a concept so well eleborated by Dicey. It does not take away from the state the power of classifying persons for certain purposes. It only means that if a law deals equally with members of a well-defined class, it is perfectly valid and is not open to the charge of denial of equal protection on the ground that it has no application to other persons.[1] The doctrine embodied here is the doctrine of human needs depending on the economic and social status of the individuals. What is, therefore, guaranteed under Art. 14 is not equality in society but equality in a class. As Mr. Justice Fazl Ali put it, "The circumstances which govern one set of persons or objects, may not necessarily be the same as those governing another set of persons or objects, so that the question of unequal treatment does not really arise as between persons governed by different conditions and different sets of circumstances."[2] In order to challenge the constitutionality of a certain law, one has not to prove, even if one can, that it creates or perpetuates a class system. One has to prove that the said law arbitrarily discriminates between different persons similarly circumstanced.[3] Here differentiation or inequality of treatment does not *perse* amount to discrimination within the inhibition of the equal protection clause.[4]

The remaining articles in this group proceed from these basic considerations. Under Article 15, the State is prohibited from making any discrimination against a citizen on grounds of religion, race, caste, sex and place of birth. Nor can a citizen be subjected to any disability on any one of these grounds, with regard to public places. The State, of course, is not prevented from making any special provision for women and children or for the advancement of backward classes. Equality of opportunity is guaranteed to all citizens in matters relating to employment or appointment to any office under the state, and no citizen can be discriminated against another on grounds of religion, race, caste, sex, descent, place of birth and residence. The Parliament, however, can prescribe certain requirements as to residence within a state in respect of certain appointments and the State can make any provision for the reservation of appointments or posts in favour of any backward class which, in the opinion of the State, is not adequately represented in the services under the State. This latter

1 *Chiranjit Lal Chaudhry* vs. *The Union of India & others* (1950) S. C. R. 839. Also refer to *State of West Bengal* v. *Anwar Ali Sarkar* (1952) S. C. R. 284.

2 *Kathi Raning Rawat* v. *The State of Saurashtra* (1952) S. C. R. 435.

3 *V. M. Syed Mohammed & Co.* v. *The State of Andhra*, A. I. R. 1951 S.C. 314.

4 *Ameerunnissa Begum & Others* v. *Mahboob & Others* (1953) S C.R. 404.

provision in the Constitution (cl.4 Art. 16) was the result of two conflicting opinions expressed in the Constitutent Assembly. One view was that there should be complete equality of opportunity for all citizens, that merit alone should be the basis of appointment and that there ought to be no reservation of any class or community. The other view was that while, in principle, complete equality was sound, there must be an exception made in favour of the backward communities.[1] The question "What is a backward community?" is left to be decided by each Government and is a justiciable matter. But though clause 4 of Art. 15 provides for the reservation of posts for backward classes, it does not authorise distribution of offices among classes other than backward classes as was done by the Communal, G.O. of Madras Government, reserving posts in the Madras Subordinate Civil Judicial Service by which a Brahmin was refused the post of District Munsif, simply because he was a Brahmin.[2]

The abolition of untouchability and titles are, formally speaking, egalitarian and were the fulfilment of long standing commitments of the Congress Party. Thus the enforcement of any disability arising out of "untouchability" constitutes an offence punishable in accordance with law. Finally, no title, not being a military or academic distinction can be conferred by the State. But these two articles (17 and 18) as Sir Ivor Jennings has noted, do not constitute rights. Article 17 only removes a social disability and article 18 creates restrictions on public officers, restrictions which might have well been imposed by administrative regulation. "It seems to be no breach of the right to equality", Jennings has said, "if Sir John Brown becomes Dr. John Brown or General John Brown, or Pandit John Brown, or Mr. Justice Brown or Rotarian John Brown, or even Sri John Brown, M.B.E., or if he rolls round in a gold-plated car, or loads his wife with jewellery and silk saries, but if like the present writer, he becomes an impecunious knight, the right to equality is broken. In whom is this right vested? It cannot be in Sri John Brown, it is neither *in rem* nor *in personam*, neither corporeal, nor incorporeal. It

ment of children in factories and mines. More positive is the freedom of conscience and free profession, practice and propagation of religion to which all "persons are equally entitled.[5]

1 A. C. Debate, Vol. VII No. 16, pp. 701-702.

2 *Venkataraman* v. *State of Madras*, A.I.R. 1951 S.C. 229.

3 Sir Ivor Jennings. Q.C. *Some Characteristics of the Indian Constitution*. p. 36-37.

4 Arts. 23 and 24. *The Constitution of India*.

5 Arts. 25 & 26-*The Constitution of India*.

only of religion, race, caste, or language. And all minorities based on religion or language have got the right to establish and administer educational institutions of their own choice.[1] This provision, again, does not impose any obligation or burden upon the State. The only limitation that it inovlves, is that if there is a cultural minority which wants to preserve its language, its script and its culture, the State shall not by law, impose upon it any other culture, which may be either local or otherwise.[2]

So far as the right to property is concerned, under Art. 19 all citizens have been given the right to acquire, hold and dispose of property and under Art. 31, which was the result of a great deal of consultation and was essentially a compromise and which has been twice amended (First Amendment and Fourth Amendment), it is provided that no person can be deprived of his property, save by authority of law. Art. 31 which in the constitution is entitled as "Right to Property" thus does not confer, really speaking, the right to property. If anything, it limits it and provides for the conditions in which the individual can be deprived of his property which is guaranteed to him under article 19 (1) but which in the constitution is titled "Right to Freedom." Under Article 31, it is provided that the law should provide for the compensation for the property and should either fix the amount of compensation or specify the principles under which or the manner in which the compensation is to be determined. The law has to do it. The Parliament has to do it. There is little that the Judiciary was expected to do about it. As Mr. Nehru, while proposing Art. 24 of the Draft Constitution in its final form put it[3]—

> "Parliament fixes either the compensation itself or the principles governing that compensation and they should not be challenged except for one reason, where it is thought that there has been a gross abuse of the law, where, in fact, there has been a fraud on the Constitution . But normally speaking one presumes that any Parliament, representing the entire community of the nation, will certainly not commit a fraud on its own Constitution."

Now, this part of Chapter III was finally incorporated in the Constitution in a definite historical background. First, there was the urgency of the land reform. Obviously nothing was and is more important and vital than a gradual reform of the big estates, particularly in Asia. On this point the Congress Party had a long

1 Arts. 29 and 30 *Ibid.*
2 C. A. Debates, Vol. IX, No. 31. 10th September 1949, pp. 1192-93.
3 C. A. Debates, Vol. VII, No. 22, p. 923.

standing commitment. Then, again, the Congress, by the Election Manifesto of 1945, had promised equitable compensation to the Zamindars. The principle of compensation had, therefore, to be retained. The authority to decide what would be fair and equitable compensation, was to [illegible] "Within limits", Mr. Nehru declar[illegible] Court can make itself a third Cham[illegible] he added, "and no Judiciary can stand in judgment over the sovereign will of Parliament representing the will of the entire community." The claim of society to property had to be safeguarded. India needed and will need for many years to come, a large scale industrial development policy and it was necessary that the State right to acquire property should be put beyond any doubt. But it was equally necessary that the community is not allowed to injure or invade the rights of the individual. He needs some [illegible] and fewer hands. Here is a new justification of the right to property as provided in the Indian Constitution. The state, that is, has to protect the individual right to property for he may possess property which may mean nothing to him, because some monopoly comes in the way and prevents him from the enjoyment of his property.[2] The Legislature, then, has the authority to acquire property in public interest after paying compensation. In determining the amount or the principle of compensation a number of factors have to be borne in mind—the capacity of the state to pay the compensation, the profit that the owner of the property has already derived, the purpose for which the property is to be acquired, the nature of the property and the number of people affected. The Parliament has been given full powers. It can fix the form and the manner of giving compensation, it can give bonds or land in exchange for the land acquired.

But when all is said, the Judiciary appears in the picture wherever there is a wrongful deprivation of the fundamental right to own property,[3] where the Legislature has seized property by acting outside its powers or without fixing the amount of compensation or the principles on which to determine such compensation.[4] Where there is expropriation under the guise of acquisition, where the principles laid down are illusory, where the principles or the manner or the form of compensations are not calculated to yield a fair equivalent, and where, in short, the Legislation perpetuates "a fraud on the Constitution,"[5] It was in these

1 *Ibid.*, p. 1195.

2 *Ibid.*, p. 1195.

3 *The State of Bengal* v. *Subodh Gopal*, S.C.R. 1954, 92.

4 *Dwarika Das Srinivas* v. *Sholapur Spinning and Weaving Company*, A. I.R. 1954 S C. 119.

5 C. A. Debates Vol. IX, No. 32, p. 1301.

is no acquisition. No title is transferred. No benefit is derived by the State. It is only regulation of property. It is only "deprivation" in public interest. Thus, whereas, "eminent domain" involves the taking of property because of its need for public use, "police power" means the regulation of such property to prevent its being used in a manner which is detrimental to public interest. Now, this police power in India is covered by Art. 31 (1), under which "no person shall be deprived of his property save by authority of law." Here, there is deprivation, no acquisition. Here, therefore, there is no compensation provided.

Now, it all depends on whether the two clauses of Art 31 are read together or separately. It is quite possible to read them together and read only eminent domain in clauses (1) and (2) of Art. 31. The marginal title of Art. 31 in the Constitution is "Compulsory acquisition of property". In the U.S.A., too, compensation is to be paid for all acquisition of property under the power of eminent domain. There is no written provision in the U.S. Constitution regarding the police power, which is a legislative power there. On this logic, therefore, it is possible to interpret Art. 31 of the Indian Constitution to mean only "eminent domain" and not police power. In fact, this is what the Supreme Court did in the Sholapur Mills case, to which we referred earlier. In this case, it was decided *inter alia* that since the ordinance taking over the management of the Sholapur Mills did not provide for compensation, it was an infringement of Article 31 of the Constitution. The case of the government was that the Sholapur Mills was one of the largest mills in Asia, employing 13,000 workers, that it suddenly stopped working in August 1949, entailing a loss of 25 lakh yards of cloth and 1½ million yards of yarn per month and unemployment of 13,000 people, that the mill was mismanaged by the Board of Directors and Agents and that therefore, a situation had been created, where a minority of helpless [illegible]

[illegible] removing the Board of Directors and taking over the management. The case of the State, therefore, was that it only exercised police [illegible] in the impugned ordinance.

The Supreme Court in this case, however, took the view that it was not the exercise of police power but that of eminent domain; that "taking possession" amounted to acquisition under Art. 31 (2) and that, therefore, compensation must have been paid; that the ordinance has over-stepped the limits of police power and was, therefore, void. Now, in this case, it is obvious that the property remained the property of the company, the shares remained the shares of the shareholders; the benefits derived out of the management of the company went to the shareholders. Where is the

eminent domain? Where is the transfer of title? For what and to whom was the compensation to be paid? Was it not merely the exercise of a regulatory power, the police power? And if so, where is the question of compensation at all? On this question Mr. Justice Mahajan argued that it is immaterial to the person who is deprived of property as to the use the State puts it or what title it acquires in it. The protection is against loss of property to the owner and there is no protection to the State by the Article. It has no fundamental right as against the citizen."[1] Now the doctrine that "the State has no fundamental right as against the citizen" is an expression of an uncritical individualism. Indeed, in this case one can see the undercurrents of a clash between a reactionary social order and a progressive legislation. It was in this background that Art. 31 was amended in the Constitution (Fourth Amendment) Act 1955. The effect of this amendment is that the adequacy of compensation cannot be challenged in a Court. But more important is the additional provision that "Where a law does not provide for the transfer of the ownership of right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property".[2] By this amendment, therefore, the original principle of the Indian Constitution that in matters of social, political and economic policy, it is the Legislature and not the Judiciary which is and will be the supreme judge, has been amplified and the doctrine that the Constitution is a sacred, unchanging, static and absolute law, has been given a lie. It is, of course, a matter of considerable regret that in the course of debates on the Fourth Amendment Bill, unfortunate and uncalled for observations were made against the Judiciary—against the judges.[3] But it is true that soon after

1 *Dwarkadas Shrinivas* V. *Sholapore Spinning & Weaving Co.* A. I. R. 1954, S. C. 119.

2 Art. 2. The Constitution (Fourth Amendment) Act. 1955.

3 Mr. Pataskar, Minister of Law : *Lok Sabha Debates, op. cit.* p. 2077, "Therefore, with due respect to the Chief Justice Patanjali Shastri, I have to say that he has fallen into the error of not having tried to make a distinction between. Art. 31 (1) and 31 (2)". See his remark about the Learned Judges "But before coming to the opinion that the Constitution makers shared the American view, atleast before that remark was made, they should have at least taken care to see what the Constitution makers did say at the time the article was passed." p. 2015. More objectionable remark "But on account of the interpretation of the Courts it has become necessary to bring forward this legislation. It should be more appropriate to hold that our constitution makers trusted the legislatures to protect the rights of citizens, as the people of Great Britain trust their Parliament to protect people's property", p. 2017. cf. Mr. Nehru's remark "We were not acquiring anything, requisitioning anything. Nevertheless, the courts in their wisdom decided that this too was governed by that clause about compensation ....." p. 1950.

the constitution was passed, it was found that the Courts in some cases, began to interpret these constitutional provisions in such a manner as to prevent social justice being meted out to those, who needed it.[1] It is also true that on the whole the role of the supreme Court in matters of social and economic policies has been extremely conservative as we will notice in the chapter on Judiciary and that the court has given relief to the working classes with greatest reluctance and even grudgingly. Nevertheless the Ministers must show necessary courtesy to those who are not present in the Legislature to hit back or to defend themselves. This is not chivalry. Remarks of this nature tend to breed disrespect for the law and the law courts and are in violation of canons of Parliamentary Democracy.

Finally, by the Fourth amendment, the inherent contradiction in the constitution between the fundamental rights and the Directive Principles of State Policy is sought to be removed. If the objectives outlined in Art. 39 of the Constitution are to be achieved, if the citizens are to have the right to an adequate means of livelihood and if the ownership and control of the material resources of the community are to be so distributed as best to subserve the common good and if concentration of wealth and means of production is to be avoided, it is necessary to discard the doctrine that "the State has no fundamental rights as against the individual". It is, that is, necessary so to qualify the fundamental right to property as may "make the fundamental rights subserve the Directive Principles of State Policy".[2] And this is what the Fourth Amendment has done.

RIGHT TO CONSTITUTIONAL REMEDIES

Finally, the right to constitutional remedies. These are covered by article 32, which guarantees the individual right to move the Supreme Court by approrpriate proceedings for the enforcement of his fundamental rights. The Supreme Court is empowered to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever it considers appropriate. Further, without prejudice to the powers of the Supreme Court, the Parliament may by law, empower any other Court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court. And finally, the right to constitutional remedies may be suspended as provided by the Constitution under Articles 353 and 359.

Now, the right to constitutional remedies is of paramount importance. It may be argued that since this right can be suspended under Article 359, it has been robbed of its inherent and fundamental values and it takes away with one hand, what is given by the other,[3] and that fundamental rights are, in the very

1 *Ibid.*, p. 2018.

2 Mr. Jawaharla.Nehru, *Lok Sabha Debates*, Vol. II, No. 1, *op. cit.* p. 1955.

3 C. 4. *Debates*, Vol. VII, No. 23, o. 943.

nature of them, rights which should never be taken away from the people. As we have already seen this argument does not fit in with the theory on which the Indian Constitution in general and Part III in particular, is based. With us, the fundamental rights are not absolute. They strike a balance, howsoever delicate, between the demands of the individual and the needs of the State. They are based on the doctrine of the superior right of the State to protect itself in times of emergency. In times of emergency the life of the State itself is in jeopardy and if the State is not able to protect, the individual himself will be found to have lost his very existence.[1] Thus in India, the right to freedom is automatically suspended during the operation of a proclamation of Emergency. Again, during such an operation the President may by order declare that the right to move any court for the enforcement of such fundamental rights as may be mentioned in the order shall remain suspended. It is, of course, implied that such rights as are guaranteed under Art. 15—the right to use wells, tanks, bathing ghats, restaurants *etc.*, would not be affected.[2]

What is the nature of these writs and constitutional guarantees and what is their scope? These writs, it would be noticed, are not new. The principle of Habeas Corpus existed and exists even now in our Criminal Procedure Code and the writ of Mandamus can be found in our law of Specific Relief. But then, there is a basic difference. In the first place, the writs as they are mentioned in the constitution, are in the nature of prerogative writs and they can be sought by an aggrieved party without bringing any suit. Without filing any proceedings, one can straight away go to the court and apply for the writ under the constitution and obtain the interim relief. But there is a second difference which is much more important. The writs as they exist in our various laws, are at the mercy of the legislature and they can be amended, abridged or taken away by it. But the writs as they are mentioned in the constitution are fundamental. They constitute a limitation on the Legislature. The Constitution has invested the Supreme Court with these rights and these writs cannot be taken away unless and until the Constitution itself is amended by means left open to the Legislature.[3] Thus Art, 32 provides a guaranteed remedy for the enforcement of fundamental rights and this remedial right is itself made fundamental by being included in Part III. The Court is thus, constituted the protector and guarantor of fundamental right.[4] The Indian Constitution by providing for a remedial right, that is, by making that remedial right itself a guaranteed fundamental right has gone a step further than most of the constitutions of the world.

1 *Ibid.*, p. 950. Also see below the analysis of Proclamation of Emergency made on Oct. 27, 1962.

2 *Ibid.*, p. 951.

3 *Ibid.*, p. 953.

4 *Ramesh Thappar* v. *The State of Madras* (1950) S.C R. 594.

So far as the scope of th [illegible] be noted, first, that no one [illegible] affected by a law, can raise [illegible] of that law.[1] Secondly, the writs referred to in Art. 32 must be co-related to one or more of the fundamental rights conferred by Part III of the constitution and can be made only for the enforcement of such rights.[2] Finally, it is immaterial whether an aggrieved party prays for a specific writ or direction or not, for the discretion of the court in the matter of framing their writ of direction to suit the exigencies of particular cases, is very wide.

ECONOMIC AND SOCIAL BASIS OF FUNDAMENTAL RIGHTS IN INDIA

In effect, these constitutional guarantees provide the right to every citizen that all the liberties guaranteed to him are made available to him. This is "the crowning section" of the whole Chapter III. There can hardly be any right unless there is a remedy for it. It is the remedy that makes a right real. This is the legal aspect. Politically, the real value of rights and remedies will of course, depend on the capacity of the individual to assert. In order to assert, he must be conscious of his rights and mindful of the correlating duties. And this requires leisure, and economic freedom. Even though the fundamental rights ultimately are intended to enhance and enlarge the liberties of the people, these liberties are not fully realized because of economic inequalities. These economic inequalities as Robert Hale has written, affect the freedom of men as producers, freedom of men as consumers and freedom of educational opportunities. Economic inequalities tend to be embodied in unequal legal rights. "In assigning and enforcing legal rights to the fruits of transactions, the law is doing more than protect the winnings in the game of production and exchange. It is dealing unequal hands to the players." In short, if the fundamental rights which embody the basic liberties of the people to realize happiness, the richness and fulness of life, and to achieve equality, are to have any meaning, there should not be any economic coercion.

Liberty, in short, presupposes that economic and intellectual climate which alone produces tolerance, and the capacity and the inclination to realize a balance between the needs of the individual and the needs of society. Whether and where the individual has disturbed this balance and transgressed the limits, is a matter to be decided not by himself, for, no individual, however high his status and position, can be the judge in his own cause. Nor can it be decided by the Executive, for, that would rob the individual of that sense of freedom in the absence of which he cannot live without fear or favour. It cannot be wholly decided

1. *Charanjit Lal Chaudhary* v. *Union of India and others* (1950) S.C.R. 869.
2. *Janardan Reddy and others* v. *The State of Hyderabad and others* (1951) S.C.R. 344. Also refer to *Nainsukh Dass and Another* v. *The State of U.P. and others* (1953) S.C.R. 1184.

even by the Legislature, otherwise the basic freedom of the individual would come to depend upon the mercy of a packed legislative assembly. Tyranny of the majorities is worse than despotism, for it has, what despotism lacks—a democratic sanction. It is, therefore, vital that the judiciary be, in theory and in practice, the guardian of the Constitution and the sentinel of fundamental rights.

But, while the judiciary has to establish and vindicate the balance between the individual and the State in order to protect the liberty of the former, it has also to refrain from making serious inroads upon the former, it has also to refrain from making serious inroads upon the claims of the latter. Political, social and economic matters of policy are to be decided by the Legislature containing the periodically elected representatives of the people and reflecting the changing moods and aspirations of the people. The alternative to this is the stultification of democracy and welfare state. What will be the limits of "legitimate social control" is a matter that cannot be left to the care of a few judges for this reason, if for no other, that they cannot descend into the arena of public controversy and cannot defend themselves. The judges are appointed, as they should be appointed, on the basis of a fixed tenure and their judgments do not and should not reflect popular vagaries. But even then, they do reflect their own. The lawyers from amongst whom the judges are appointed, are brought up, educated and trained in a climate of social barricades and intellectual snobbery and they tend to perpetuate the dead weight of tradition. Exceptions apart, they move slowly and their time steals a march over them. If, therefore, the legistature and the Judiciary are to function within their own sphere without indulging in mutual criticism, which, in the final analysis, places the Judiciary on the defensive and undermines democracy, it is vital that all matters relating to high policies, should be the sole concern of the Legislature, which is accountable to the people and from whom it takes its mandate. After all, no Court can regard itself as a super Legislature and sit in judgment over the act of the Legislature, a Court of appeal or a review, for by so doing, it would be thwarting the express will of the people and would be opening the floodgates of revolution. In what given situation what social and economic rights will be permitted is a matter which has to [illegible] tive which is respo [illegible] lared only by the [illegible] approved by the [illegible] It is not for the [illegible] roclaimed or not. [illegible] e of—acts which affect fundamental rights materially.

EMERGENCY AND FUNDAMENTAL RIGHTS

Since the Constitution came into force, there has been only one occasion when the President proclaimed a state of Emergency.

The occasion was the massive Chinese invasion on India's North Eastern border (N.E.F.A.) on October 20, 1962. On 26th October, ur[illegible] cl[illegible] C[illegible] w[illegible] gated, which was later approved by the Parliament. The ordinance provided for special measures to ensure the public safety and certain offences. It empowered the government to requisition any immovable property (save religious), to set up special tribunals to try offences under the ordinance, to check false rumours, to prevent any attempt to tamper with the loyalty of persons or to help the enemy, to search any place reasonably suspected of being used for any purpose prejudicial to the public safety or interest and to award death sentence for revealing secrets. On October 30, 1962, the President by an order suspended the enforcement of the rights conferred by Articles 21-22 in the case of a foreigner or a person not of Indian origin, who was at birth a citizen or subject of any country committing external aggression against India or of any other assisting the country committing such aggression against India. It was specified that the period of suspension of these Articles is the same during which the proclamation of emergency would remain in force. The next day, the President promulgated the Foreigners Law (application and amendment) Ordinance, 1962, empowering the Government to arrest and detain any foreigner suspected of subversion. On November, 14, the right of any person to move any Court for the enforcement of rights conferred under Article 14 was taken away. The order was issued by the President under Article 359 of the Constitution declaring that the right to move any Court for the enforcement of certain rights conferred by Part III of the Constitution shall remain suspended for the period during which the prolamatioon of Emergency under Article 352 remains in force. The rights specified initially and later by amendment, in the Order were the rights contained in Articles 21, 22 and 14 of the Constitution. The Order had referred to the provisions of the Defence of India Ordinance (IV of 1962) which had then been already promulgated. Thereafter the Defence of India was passed and the Ordinance was repealed.[1]

Now, these extra-ordinary powers were used by the Government to arrest and detain without trial, about 900 Communists (of whom about 300 were released in March-April 1963) who were considered as security risk. Had these powers been also employed to put down the anti-social elements exploiting the people by continuously raising the prices of essential commodities,

1 The provisions relevant to preventive detention are contained in Section 3 (2) (15) (i) of the Defence of India Act, and Rules 30 and 30A of the Defence of India Rules. Also see Sections 40, 41, and 43 of the Defence of India Act (1962).

continuing to evade taxes, and cheat the public exchequer and actively encouraging fissiparous tendencies, the people would have extended their whole-hearted support to the Government. As it is, an agitation developed against the different provisions of the D.I.R. particularly those relating to preventive detention.

A band of dedicated lawyers of the Supreme Court took up the case of one Shri Raj Kumar Vohra, a lawyer detained at Saharanpur Jail by the order of the District Magistrate, Saharanpur (January 11, 63). His patriotic activities had won him considerable popular support. Protests against his detention were lodged with the Chief Minister of Uttar Pradesh by practically all the members of the U. P. Legislative Assembly, eminent members of the Bar, and respectable citizens of the town. All this went unheeded. The detenu, then, sought the opinion of the seven great Jurists of India—Messrs M. C. Setalvad, N. C. Chatterjee, A. V. Viswanath Sastri, M. V. Nambiar, Sarjoo Prasad, A. S. R. Chari and C. B. Agarwala on the legal validity of the D.I.R. and of his detention. They delivered their opinions separately on May 7, 1963 and these were presented to the Prime Minister who forwarded the same to the Home Ministry.

In the opinion of Mr. Setalvad, former Attorney-General, the provisions of the Defence of India Act infringed the fundamental rights contained in Article 22 sub-clauses (4), (5) and (7) of the Constitution, which provide for certain protection to persons detained under a preventive detention law. According to him, these provisions also offended against the fundamental right contained in Article 14 (equality before law). While the Preventive Detention Act embodied within itself the safeguards provided by the Constitution in Article 22, (like review of the detention order by an advisory board), the provisions under the Defence of India Act did not contain those safeguards. Thus there were two preventive detention laws under which persons could be detained and the one recently enacted was less favourable and more onerous to the person detained. Mr. Setalvad, however, did not think that the provisions of the Act infringed the fundamental right contained in Article 21 (right of personal liberty.)

Mr. Sastri, while agreeing that the provisions of the Act infringed the fundamental rights under Articles 14 and 22, expressed the opinion that these provisions could not be challenged on the ground of excessive delegation of legislative power to the executive. In the opinion of Mr. Chatterjee, any law made during the Emergency, in so far as it provided for preventive detention, must comply with the constitutional safeguards provided for in Article 22. Parliament had no authority to make any law in derogation of Article 22. Mr. Sarjoo Prasad pointed out a case in which it had been held that Article 19 did not apply to a law relating to preventive detention inasmuch as there was a specially, self-contained provision in Article 22 regulating it.

Mr. Nambiar said that under the Defence of India Act detention was permissible or empowered even for an indefinite period. The detenu was kept in the dark as to why he was detained, on what grounds or for what prejudicial act. It was plain that the requirements of Article 22 of the Constitution were not complied with.

Mr. Chari contended that the right to move a court for enforcement of fundamental rights is a specific concept. It is the whole content of the right under Article 32 and is also part of the jurisdiction of the High Court under Article 226. But the right to have the legality of detention determined is a right quite apart from Part III of the Constitution. Section 491 Cr. P.C. still remains. The power of a Court to determine legality of a [illegible]

developed out of a legal misconception in the minds of the presidents' legal advisers.

Mr. C. B. Agarwala argued that the proclamation of emergency issued under Art. 352 does not have the effect of suspending fundamental rights other than the right under Art. 19, and Art. 359 merely suspends the remedy for the enforcement of the rights conferred by Part III during the emrgency, but does not take away or suspend the rights themselves. The distinction between the extinguishment or suspension of the remedy for the

operation of the proclamation of emergency, Parliament has no power in view of the provisions of Art. 13 (2) to make any law [illegible]

invalid pieces of legislation.

Furthermore, these provisions are violative of Art. 14 of the Constitution as well, because the Preventive Detention Act, 1950, which provides for safeguards as laid down in Clauses 4 to 7 of Art. 22 of the Constitution has not been repealed with the result that there are now in existence two laws one (*i.e.*, Rule 30) more stringent to the detainee than the other (*i.e.*, the Preventive Detention Act 1950) and the executive has been left with the discretion arbitrarily to detain a person similarly situated either under the one or the other law as it suits its fancy. If sections 3 (2) 15 (1) of the Defence of India Act and Rule 30 made thereunder are invalid, as stated above, obviously the detention of the querist is illegal. If the constitutional rights under Arts. 21 and 22 were

suspended, there would be nothing illegal in the provisions of S. 3 (2)(15), of the Defence of India Act. But because the remedy for the enforcement of such rights is alone suspended and the rights themselves have not been suspended, Section 3 (2) (15), is, as already stated, invalid under Art. 13 (2) of the Constitution. As S. 3 (2) (15), is invalid, the rules made under it are also invalid. The detention of the querist is, therefore, as already stated, without support of law. Therefore, the High Court is bound, under S. 491 of the Cr. P. Code, to set him at liberty.

The judgent, *inter alia*, said: "There is provision in the impugned laws for an advisory board or for the furnishing of grounds to a detenu so that he may know why he is detained and make a representation against the order of detention. Preventive detention for more than three months has been provided for without the act having prescribed the circumstances under which and the class or classes of cases which the Act was to apply and the maximum period for which detenus of any class or classes could be detained. No procedure for consulting an Advisory Body is provided. It is true that rule 30 (*a*) provides for review. Those provisions, however, are of no relevancy in his connection. They do not touch the merits of the order of detention already made but simply provide a machinery by which an order already made can be reviewed by the same or higher authorities at a later stage."[1]

Pointing out to the violation of Art. 14 by the impugned laws their lordships drew attention to the Preventive Detention Act, 1950, which has already been on the Indian statue book for several years. Their Lordships pointed out in the course of their judgment : "The Preventive Detention Act, 1950, authorises the detention of persons and also incorporates certain safeguards provided in Article 22 of the Constitution against abuse, misuse or arbitrary use of power of preventive detention. All such safeguards

of the safeguards provided for by the Preventive Detention Act, 1950. Admittedly the provisions of the impugned laws are more onerous and definitely more prejudicial to a detenue than the provisions of the Preventive Detention Act, 1950. There is no enunciation of any legislative policy in the impunged laws on the basis of which persons detained under those laws could be differentiated from those detained under the Preventive Detention Act, 1950.

"The result, therefore, is that there are on the Indian statute

1. For details see "Parliament : Emergency and Personal Freedom". Opinion of Jurists. Bar Association of India, New Delhi.

book two preventive detention laws under which persons may be detained leaving it to the sweet will of the executive, unguided by any parliamentary indications, to decide as to which particular persons or class of persons they would apply the comparatively generous provisions of the Preventive Detention Act, 1950, and to which they would apply the stringent and the onerous provisions of the impugned laws. In our judgment, therefore, the impugned provisions are hit by Article 14 of the Constitution also."

Dealing with the question whether in view of Article 359 of the Constitution and the President's order of November 3, 1962 under it suspending for the duration of the Emergency the right of a citizen to move a court of law for enforcement of fundamental rights conferred by Articles 14, 21 and 22, the Courts can grant any relief, their Lordships pointed out:

"If we take it that the court is precluded from going into the question of the void nature of the impugned laws and that even if the state makes such laws, they cannot be prevented from being administered, the result would be that for all practical purposes the State would be in a position to make laws and take executive actions even by violating the provisions relating to other fundamental rights."

They stated further.

".......it would appear that it could not be the intention of the Constitution makers that there could be no bar against Parliament passing laws like the impugned ones, and the executive taking action in derogation of [illegible] as the Constitution created a [illegible] State making laws like the imp[illegible] them from doing so, it cannot be said that it left the way open for them to do so indirectly. There is good authority for the proposition that what cannot be done directly cannot be done indirectly.

"As we see Article 359 and the President's Order thereunder, all that they provide for is to postpone action against the executive for infringing Articles 14, 21 and 22, but that would not make the impugned laws administrable, nor would it confer on the executive the power to detain an Indian citizen under the sanction of those void laws."

The Hon'ble Judges held that the petition was not one for enforcement of fundamental rights. It was simply against the operation of an illegal law. "Before the Constitution was framed, there were no fundamental ri[illegible] not to be detained in except [illegible] always existed in favour of [illegible] right to the individual would [illegible]

Hence those who were detained under the DIR which was found by their Lordships to be void and a nullity in the face of the provisions of the Constitution, had every right to seek remedy

under the ordinary laws of the land which were there to provide relief even under an alien government. Section 491 Cr. P.C., their Lordships held, was the approrpriate provision of law under which relief could be sought and the court was duty-bound to grant it, and there was no bar on its doing so. "Once a case under Section 491 Cr.P.C., is made out, it becomes the duty of this Court to give relief to the petitioners".

Accepting the petition, their Lordships came to the conclusion that the detenus in question were being detained "withont the authority of the law and the Court had jurisdiction to direct their release." Ordering that they be set at liberty forthwith the judges said :

"No case has been brought to our notice where, during an emergency or a war, a person can be detained without the authority of law."

Other High Courts (Punjab and Bombay) had, however- upheld the D.I.R. The question, therefore, came up before the Supreme Court which delivered its judgment on September 2, 1963.[1] The Court held that the President's Order under Article 359 (1) of the Constitution precluded the detenus from moving not only the Supreme Court under Article 32 but also the High Courts- both under Article 226 of the Constitution and section 491 Cr. P.C., The Court, therefore, upheld the decisions of the Punjab and Bombay High Courts that the applications by the detenus under Section 491 Cr. P.C., were actually seeking to enforce their Fundamental Rights and as such could not be sustained in view of the President's Order under Article 359. Having decided on the true scope and meaning of Article 359 (2) and the President's Order issued under it, the Court directed that a batch of 26 appeals against Punjab and Bombay High Courts' orders be now placed before a Constitution bench of the Court for decision on merits of each of the appeals.

Mr. Justice P. B. Gajendaragadkar delivering the majority judgment said : "We hold that the Punjab and Bombay High Courts are right in coming to the conclusion that applications made by the detenus for their release under Section 491 (1) (B) Cr. P.C, are incompetent in so far as they seek to challenge the valldity of their detentions on the ground that the act and rules under which they are detained suffer from the vice that they contravened the fundamental rights guaranteed by Articles 14, 21 and ...

On the question of the constitutional position on the validity of the Defence of India Act, the majority judgment said :

1 The majority judgment was given by J. J. Gajendragadkar, Wanchoo, Hidayatullah, K. C. Dass Gupta, and J. C. Shah; Mr. Justice Subba Rao gave the minority judgment.

"Article 14 guarantees equality before law. Article 21 provides, *inter alia*, that no person shall be deprived of his personal liberty, except according to procedure established by law, and Art. 22 (4), (5), (6) and (7) lay down Constitutional safeguards for the protection of the citizen whose personal liberty may be affected by an order of detention passed against him. Art. 22 (4) requires that an Advisory Board should be constituted and that cases of detenus should be referred to the Advisory Board for its opinion as provided therein. Article 22 (5) imposes an obligation on the detaining authority to communicate to the detenu grounds on [illegible] the detaining authority considers to be against public interest to disclose, and Art. 22 (7) prescribes certain conditions which have to be satisfied by any law which the Parliament may pass empowering the detention of a citizen. It is thus clear that the Constitution empowers the Parliament to make a law providing for the detention of citizens, but this power has to be exercised subject to the mandatory conditions specified in Arts 22 (4) and (7)".

"It is common ground that the Preventive Detention Act of 1950 complies with these requirements inasmuch as it has enacted sections 7 to 13 in that behalf. It is also clear that these Constitutional safeguards have not been provided for by the impugned Act. (Defence of India Act, 1962).

"Parliament has chosen to pass the Act under challenge and has disregarded the Constitutional provisions of Articles 14 and 22.

"It is quite true that if the Act has contravened the citizens' fundamental rights under Articles 14 and 22, it would be void and the detentions effected under the relevant provisions of the said Act would be equally inoperative.

"What the Presidential Order purports to do by virtue of the power conferred on the President by Art. 359 (1) is to bar the remedy of the citizens to move any court for the enforcement of the specified rights. The rights are not expressly suspended, but the citizen is deprived of his right to move any court for their enforcement. That is one important distinction between the provisions of Art. 358 and Art. 359 (1).

"It would be noticed that the Presidential Order cannot widen the authority of the legislature or the executive; it merely suspends the right to move any court to obtain a relief on the ground that the rights conferred by Part III have been contravened, if the said rights are specified in the Order.

"At the commencement of the hearing of these appeals when Mr. Setalvad began to argue about the validity of the impugned provisions of the Act and the Rules, it appeared that as regards

land, Manipr, Tripura and Jammu and Kashmir. This was conveyed to the Parliament on May 18. In the rest of the country, only the Central Government will have powers under the D.I.R. and even these will have limited application, *viz.*, to meet the needs of civil defence and defence. If any State government wants to act on the D.I.R. it will have to obtain the previous sanction of the Union Government.

DIRECTIVE PRINCIPLES OF STATE POLICY

Part IV of the Constitution containing 16 articles is devoted to the Directive principles of State Policy dealing with social and economic matters, education and culture, politics, administrative and legal issues. Most of the directives, like promotion of welfare of the people (Art. 38), equal pay for equal work, protection of children against exploitation (Art. 39), right to work and to education (Art. 41), maternity relief (Art. 42), living wages of workers (Art. 43), provision for free and compulsory education for children (Art. 45), duty of the state to raise the level of nutrition and the standard of living and to improve public health seem to have been inspired by the ideas of a Welfare State. They represent an amalgam of utilitarian and socialistic thought. The directive that the State shall take steps to organise village P... such powers and ... to function as units ... the original draft, ...oversy in the Constituent Assembly. The organization of Village Panchayats was an important item in the Gandhian programme and Dr. Ambedkar had to accept it much against his wish. The promulgation of a uniform civil code, protection of monuments and places, the separation ... the old de... placed in t... in Art. 51 t... peace and security, maintain just and honourable relations between nations, foster respect for international law and treaty obligation, and encourage settlement of international disputes by arbitration.

...ation in the Constituent Assem-... directives as "a novel feature" ...amentary Democracy.[1] It was in the Spanish and the Irish Constitutions that they were included for the first time. At home, the immediate source of this Chapter seems to have been the Instrument of Instructions under the Government of India Act of 1935. The only difference was that the Instrument of Instructions was meant for the Executive, while the Directives are instructions to the State, the Legislature

1 C. A. Debates, Vol. VII, No. 1, p. 41.

and the Executive included. In this part, unless the context otherwise requires, the "State" includes the Government and the Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India. The term "State" is here used both in a collective as well as in a distributive sense and for the purposes of the directive principles, even a village panchayat or a district or local board would be the State.[1] But even such a comprehensive definition of the State does not manifestly include the judiciary, for under Art. 37 these directives are not enforceable by any court. Nevertheless they are "fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws."[2]

What is the constitutional value and status of these principles? They are, of course, not enforceable in a court of law and in the nature of things they could not be. Under Art. 50, "the state shall take steps to separate the judiciary from the executive in the public services of the States". Now, suppose the State does not take any such step. Can a Court enforce it? Against whom? In case a decree is granted by a court of law, who will carry it out? If the Government does not carry it out, can the Supreme Court enforce it? Can the Court, through one of its officers, imprison all the Ministers and bring into existence a new set of ministers? Thus, these principles are only directives and are not meant to be justiceable. It is not a court but public opinion, that can enforce them. At the time of elections it is open [illegible] t in the back- [illegible] n to power a [illegible]

These directives, thus seen, constitute the national objectives, the national conscience, and whosoever captures power will not be free to violate its dictates. The Government may not have to answer for their breach in a court of law but there is the bigger and the more powerful tribunal to which an account will have to be given if the Government were to treat them merely as resolutions made on New Year's day which are broken on the 2nd of January.[3] It is definitely open to a legislature to point out, when an Act is brought before it, that it is in conflict with these directives. It is more doubtful to say that it is open to the President of a Legislative assembly to rule out a Bill on the ground that it was in violation of these principles.[4]

Again, while they are not justiceable, the courts may take cognisance of these principles for the purpose of upholding social legislation. It is true that they have to conform to and run as

1 *Ibid.*, Vol. VII, No. 9, pp. 477-487.
2 Art. 37, The Constitution of India.
3 C. A. Debates, Vol. VII, No. 9. p. 476.
5 *Ibid.*, p. 482.

subsidiary to the chapter or Fundamental Rights,[1] yet the restrictions which are imposed on the exercise of fundamental rights for the purpose of securing the objectives enjoined by any of the Directives may be regarded as "reasonable" restrictions within the meaning of clauses 2 to 6 of Art. 14.[2] Unless these principles are kept in view by the Legislature in the making of the laws, by the executive in applying them and by the Judiciary in interpreting them, they will remain pious superfluities, for most of them are so well known that they hardly require to be stated formally in the Constitution. They seem to be in the twilight of law and morality and tend to escape both. Perhaps it could have conferred a greater respectability on them if there had been a provision that any law made in contravention of these principles would to that extent be void. Theoretically it seems to be unsound to make a provision for such principles in a constitution. As Prof. K.T. Shah put it, they are like a cheque on a bank payable when able—only if the resources of the Bank permit.[3]

It may be argued that these principles provide an element of permanence in a democracy which is run by changing governments of different political parties, and that enshrining as they do the ideals and principles of economic and social democracy, they provide an insurance against extremists from the Right and from the Left; that they will always pull back the revolutionary and push forward the reactiontaries; and that, even though they are unenforceable, they will constantly remind the succeeding governments of the objectives and purposes of the Constitution. There is some weight in all these arguments. While in a democracy different political parties cannot be bound down by a common economic and social programme.[4] there must be a broad agreement on fundamentals which may enable them to bicker safely. But these directives mix up relatively unimportant issues with the more important ones, the more modern with the older concepts. They hardly contain an organic social or economic programme. They have been rightly called as "the rump of the drafting committee" as "the veritable dustbin of sentiments sufficiently resilient to permit any individual to ride his hobby-horse into it",[5] as a moral homily or a manifesto of aims and aspirations.[6]

It is sometimes suggested that if any Bill is passed by the Legislature which is in direct contravention of any of the Directives, the President or the Governor may refuse to give his assent. Dr. Ambedkar called it "a dangerous doctrine" and added that

1 The State of Madras *v.* Sm. Champakan Dorairajan and Another (1951) S. C. R. 525.
2 The State of Bombay *v.* Balsara (1951) S. C. R. 682.
3 C. A. Debates, Vol. VII, No. 9, p. 479.
4 *Ibid.*, 488.
5 *Ibid.*, Vol. VII, No. 12, pp. 582-583.
6 *Ibid.*, Vol. VII. No. 2, p. 251.

our constitution does not warrant it.[1] Now this apprehension was expressed by Mr. Santhanam in the Constitutent Assembly. He argued that these Directives or Instructions may lead to a conflict between the President of India and the Prime Minister and between the provincial Ministries and the Governor. He pointedly asked, "What happens if the Prime Minister of India ignores these Instructions?"[2] It is submitted that the President may claim to be acting only as "the guardian of the Constitution" if he were to impose a penal dissolution on a ministry which has got a law passed by the Parliament in contravention of the Directive Principles of State Policy by withholding his assent to it. He could easily justify his action by arguing that they are "fundamental in the governance of the country" and thereby inject a stream of tendency which may undermine the basic principles of parliamentary democracy.

The constructive value of these directives is of course doubtful. Nevertheless, much depends on the attitudes the Courts take in interpreting different sections of the Constitution. It is true that they cannot be implemented or 'enforced without appropriate legislation and so long as such laws are not made, the courts theoretically cannot go beyond an existing law in order to implement a certain directive. In themselves, the directives do not confer any legislative power upon the Legislature; they are also evasive on the decisive social issues. But these principles have in actual practice, influenced not only the law-making bodies in our country but also the Courts of Law. It is the duty of the Courts to make the fundamental rights subordinate to the Directive Principles of State Policy. By so doing, they will attach a real value to both. Indeed outside the context of the Directive Principles, the Fundamental Rights have no social and economic content whatever.

FUNDAMENTAL RIGHTS IN THE U.S.A.

The concept of rights in the U. S. A., is derived from the Magna-Charta, the English Petition of Right and the Bill of Rights (1689). The first ten amendments of the U.S. Constitution (1791). spell out the rights guaranteed to an American citizen. In fact, the first eight set out the substantive and procedural personal rights while the last two are general rules of interpretation of the relation between the state and federal governments all powers not delegated by the constitution to the U.S., nor prohibited to the States, being reserved to the States or the people. These rights are in the nature of prohibition of the enactment by the Congress of laws infringing them. For example, the Congress shall make no law respecting an establishment of religion or

1 D. . Basu : A Commentary on the Constitution, First Edition Foreword, p. vii.

2 C. A. Debates, Vol. VII. No. 3, pp. 263-264.

prohibiting the exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for redress of grievances. The state will not infringe the right of the people to keep and bear arms.[1] No soldier in time of peace can be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.[2] The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and persons or things to be seized.[3] It is provided that no person shall be held to answer for a capital, or other infamous crime, unless on a presentment or indictment of a Grand Jury except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; that no person shall be punished twice for the same offence, and that none can be compelled in any criminal case to be a witness against himself. None can be deprived of life, liberty or property without due process of law. Private property cannot be taken for public use without just compensation. In all criminal prosecution, it is provided the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district, where the crime is committed. The accused has the right to be defended by the Counsel of his choice, to be notified of the charges against him, to be confronted with witnesses and to have compulsory process or calling witnesses.[5] The citizen's right to a jury trial in suits at common law involving over 20 dollars is guaranteed.[6] Finally, it is provided that excessive bail shall not be required; that excessive fines shall not be imposed; and that cruel and unusual punishments shall not be inflicted.[7] In addition to these rights, the original constitution guaranteed the rights of constitutional writs of *habeus corpus* which cannot be suspended except when in state of rebellion or invasion public safety can require it.[8] No Bill of Attainder or *expost facto* law can be passed.[9] No title of nobility can be granted by the U.S.A., and no person holding any offices of profit or trust can accept, without the consent of the Congress, any present, emolument, office or title of any kind whatever, from any king, prince, or foreign State.[10]

1 1st Amendment.
2 2nd Amendment.
3 3rd Amendment.
4 4th Amendment.
5 6th Amendment.
6 7th Amendment.
7 8th Amendment.
8 Art. 1, Sec. 9, para 2.
9 Art. 1, Sec. 9, para 3.
10 Art. 1, Sec. 9, para 8.

Now, all these rights are available to each citizen in all the 50 States alike.[1] These rights are protected not only against infringement by the Federal Government and the Congress but also against State action.[2] There are, of course, practical limits to these rights. "Speedy trial", for example, does not rule out "law's delay". In case of rebellion or invasion, *habeas corpus* may be suspended in public interest. The Constitutional guarantee of trial by jury applies only to proceedings in Federal Courts. The great bulk of trials over the country as a whole are in State Courts and as to such proceedings all that the Constitution guarantées is that there shall be due process of law. The Supreme Court has held that Jury trial is not essential to due process either in civil or criminal cases. The Macarthy period after 1945 seriously curtailed the individual liberties of the American citizen and created almost a totalitarian atmosphere which happily did not last long. Even the Universities were affected by the rivals. The so-called Loyalty Oath Controversy took a heavy toll of traditional freedoms,[3] as we will shortly see. The real threat to civil liberties in the judgment of a large number of Americans has come from that section of citizens "who did not (and could not honestly) accept the rejection of revolution as a means of altering the American political and social system and whose primary allegiance was to a foreign power." But from 1920 to 1945, the Communist Party or movement in the U.S.A., had not been very considerable and the Soviet Union did not constitute a serious threat to the American way of life. The New Deal of the thirties built up a welfare state and tended to make rights guaranteed formally in the constitution very real. The great Depression of 1929-36 had shown not only the economic ravages of unemployment but also the human degradation imposed upon those who are able and anxious to work but cannot find a job for reasons beyond their control. The Depression, therefore, undermined the faith of the Americans in the orthodox philosophy of *laissez-faire* according to which the disequilibrium of the market would eventually be restored to a new equilibrium without any interference from outside. The New Deal was now the answer, a practical response to urgent practical problems. The Agricultural Adjustment Act (May 12, 1933) attempted to help the farmer by raising farm prices to a level that would enable farmers to buy industrial products as in the years 1909-1914. The Act was struck down by the Supreme Court in 1936 but the Congress subsequently enacted the Soil Conservation Act, the Domestic Allotment Act and in 1928, a New Agricultural Adjustment Act. In 1935 the federal government set up the Works Progress Administration with a view to providing work relief rather than cash doles. The Wagner Act (National Labour Relations Act, July, 5, 1935) gave full statutory regulation of labour manage-

1 Art. 4, Sec. 2, para 1.
2 14th Amendment.
3 Refer to *The Sociological Review*, July 1953. pp. 9-28.

ment relations in the U.S. and became the Magna Charta of American Labour. It encouraged collective bargaining between labour and management and substituted peaceful discussion for violence. This Act was in 1947 replaced by the Taft-Hartley Act (Labour Management Relations Act), which retained the principle of collective bargaining. The Social Security Act of 1935 recognized the principle that the community on the local, state and federal levels is partly responsible for assuring its citizens of some protection against want and insecurity. The New Deal also included notable advances in the fields of housing, education and health. All this has been based on a more equiltable distribu- [illegible] of tomorrow rather than a simple method of transferring propeity from the rich to the poor.

During the Second World War, however, the exigencies of the War heavily told upon the traditional concept of freedoms in the United States. The Smith Act of 1940 made illegal the advocacy of force or violence, as a means of overthrowing the government of the United States and the organization of any body which taught such doctrine. At the end of the War (after 1954), the Cold War, the anti-Communist hysteria, the failure of the U.S. China policy further curtailed the area of freedom and under the Smith Act which had been originally found to meet the Nazi threat, the eleven Communist leaders were convicted (the Dennis Case). In this case the U.S. Courts transferred Justice Holmes' test of a "clear and present danger" into "a probable danger at an indefinite time", for here, the accused were punished not for having posed a clear and present danger to the security of the United States but for posing even a probable danger at some further date. The Supreme Court held that the Smith Act did not infringe ordinary freedom of discussion even where the ideas of Marxism-Leninism were concerned, but only their use to promote violent revolutionary action, and that the illegality of this intention was unaffected by the slender prospects of such action being attempted in the near future. Since the American Constitution embodied methods for peaceful amendment, there could be no right of revolution in the U.S.

Another encroachment on the civil liberties in the United States ensued from the attempt to make communist beliefs a disqualification for certain types of public employment and to enforce this by legislation requiring loyalty oaths from teachers and others. The Taft-Hartley Act excluded Communists from access to the services of the National Labour Relations Board. A number of State statutes imposed loyalty oaths upon classes of their employees and making membership in "subversive organizations" a disqualification for such employment, and the persons

1 Irving Dalliartd : *The Spirit of Liberty*, pages XV-XVII.

to suffer in most of the cases have been teachers. Many teachers were dismissed just because relying on the bar to self-incrimination contained in the Fourth Amendment to the Constitution, they refused to answer questions about political views or affiliations. Once a person is dismissed or otherwise excluded from public employment, he may find all doors of even private employment closed to him. The very fact that a man's loyalities have been challenged by the Congressional Committees of investigation, leaves a definite stigma which will pursue him all along.

Apart from this type of discrmination, there is the problem of the Jews and the Negroes. Colonel House advised Wilson against the appointment of Brandeis as the Attorney General in his Administration. There were, until recently, undeclared restrictions upon the number of Jews who could enter a particular University .. [illegible] tionally exc[illegible] doctor, a Je[illegible] Conversely, [illegible] that ground. Roosevelt's use of Jews in administering the New Deal was one of the central theme in anti-Roosevelt propaganda. More serious has been the discrimination against the Negroes, for, here resistance to federal action has been maintained by the South on the plea that race relations are a matter for local action, and that no improvement can be envisaged which does not receive the willing assent of the White majority. The Supreme Court has, of course, rejected this argument in recent years. Many Negroes have migrated to states where they were, at least, permitted the right to vote. The federal government has also ended segregation in the armed services. The foreign criticism of colour question in the U.S. must have influenced the Court. The Little Rock affair (1957) streamlined the Negro Problem inspite of the Court's decisions in the segregation cases in May 1954. In September 1962, there occurred the famous Mississippi episode in which James Meredith, the 29 year old Negro, was refused admission to the State University. President Kennedy had to take all legal and military steps against Governor Barnett before the trouble ended. The last ditch attempt by the unreconciled segregationists of Mississippi to prevent equality of opportunity to the Negroes, thus ended in failure. But it must be pointed out that the American Society is still not in step with the law and that there are regions in the U.S.A., where a Negro may not even today be able to enter a white man's house by the front door. In India, it must be again stressed, there is hardly any place where a sweeper could enter the house of a caste Hindu even by the back door. However, what is undeniable is that the Negro, in the U.S.A. as the Harijan in India, has the law of the land as also the dynamics of human growth on his side.[1]

1. In June 1963, Medgar Evers, Field Secretary of the National Association For the Advancement of Coloured People in Jackson (Missipi) was

In the U.S.A., then, the area of freedom is quite broad and quite real. The standards of living are fairly high. There is some unemployment but it does not create the element of genuine social despair on which fascism feeds. The militarization of state apparatus is a more serious threat, for, in the name of security serious inroads on freedom can always be made. In such a climate, the former, the police and the militia occupy a prominent place in society and the distance between Democracy and Totalitarianism becomes extremely narrow. Relentless competition with a ruthless opponent can always lend a democracy the lineaments of the garrison state. To this day the civil authority is, however, supreme and the spectre of the man and the horse back is held firmly in check.

CIVIL LIBERTIES IN GREAT BRITIAN

As in the U.S.A., and India, Civil liberties or rights in Britain are assured to all persons, while the more important rights of voting and holding office are reserved to citizens. All persons residing permanently in the country have to pay taxes and may be called upon to render military service. We have already stated that in Britain, there are hardly any written guarantees and certainly not in the American sense. Parliamentary legal supremacy is the bedrock of the British system. Now, without an organized written constitution, this principle precludes judicial review of statutory enactments for the purpose of protecting civil liberties just as it makes it legally possible for parliament to pass laws violating these liberties. This, on the face of it, would appear to be an extremely weak arrangement to safeguard individual freedom. But the world knows that the English man is the freest. The secret of this freedom is English pragmatism, conservatism and sheer commonsense. Let us quote Jenning on the subject—

"......We are a conservative people, and Parliament is truly British, for it makes changes cautiously. Most of the world has become republican, but we have kept our Monarchy and now we pride ourselves on being so sensible. We do not need to defend the Monarchy any longer for it does its job better than any institution that the lawyer could devise. We have carefully preserved the independence of our judges, and we do not require a constitutional provision to protect them. Free election and the political liberties needed for party controversy are part of our tradition and need not be specifically embodied in the laws. We do not fear a communist coup d' etat or a fascist revolution, for no communist or fascist ever gets enough support to be more than a nuisance. We have no laws against discrimination because our laws do not discriminate...."[1]

murdered. On the 19th June, Kennedy sent to Congress the Negro's Civil Rights Bill barring discrimination in jobs, schools and public accommodation.

1. *The Approach to Self-Government*, p. 123.

In Britian, then, there is no definitive statement of fundamental rights, although the Habeas Corpus Act of 1679 and the Bill of Rights of 1689 do assure the right to writs of *Habeas Corpus*, the right of petition, the right to protection from cruel and unusual punishments, the right to free election, and the right to protection from fines and forfeitures prior to conviction. The procedural guarantees are incorporated in the British Constitutional practice; although they can be modified or altered by the Parliament at any time. The fundamental political liberties—freedom of speech and press, freedom of assembly, freedom of association and freedom of religion are grounded in common law "whose basic principle is that one may do or say what one will so long as it is not forbidden by law nor infringes upon the similar rights of others". Thus, for example, freedom of speech exists without specific written sanction so long as it is not forbidden, and it is limited by the laws relating to perjury, libel, sedition and the like.

It follows that common law (*i.e.*, Custom which is enforceable in the courts) provides "the sanction for the core of British Civil liberties'.. Common law was post-Norman. It meant the law administered in the King's Courts, as distinguished from the local customs administered by the Saxon Courts. It had its [illegible] ho decided each case on their own [illegible] to the Curia Regis when in doubt. [illegible] was formed by practice, and the custom of the King's court became the Common Law of the whole of England. In addition to the statutes and common law, the well-known liberties are rooted in the Rule of law and public opinion. In fact, liberty in England had meant three things—Parliamentary Government and the limitation of the prerogative, minimising interference with people's freedom in matters of opinion, of contract, trade and social habit, and the Rule of Law. Rule of law involves the principle that if rights are legally at the mercy of the Parliament whose acts are not subject to judicial review, Parliamentary power is, in fact, a limited power which cannot be capriciously employed against civil liberties. It implies that whenever public policy requires any restraint to be imposed upon people's liberty to do as they like, that restraint ought to be exercised in sole reliance upon pre-established law impartially interpreted. It thus subjects the governors as well as the governed to the statutes enacted, [illegible]

In short, it confines power to the legislator and to the impartial Judge; no room is left for the exercise of any uncontrolled discretion to be exercised in the carrying out of the law by the executive power. It also compels policy to come into the open and to declare itself. It prevents powers given for one purpose being used for another. It ensures equality in the eye of the law apart from subjecting every body to law.

But, then, there may be conditions and circumstances when

the sway of the Rule of Law is put under limits even in England. The way Dr. Robert Soblen's case was handled by the British Courts and by the Home Secretary, Henry Brooke, does not do any credit to the British system of Rule of Law. Soblen, a psychiatrist at Rockland State Hospital, New York since 1954 was arrested by FBI on charges of stealing defence secrets in November 1960. He was already suffering from leukaemia and was allowed bail to have hospital treatment. In August 1961 he was found guilty of spying in America for Russia and was sentenced to life imprisonment. His appeal was dismissed in March 1962 but he was again allowed bail pending final appeal to the U.S. Supreme Court. The appeal was dismissed but meanwhile Soblen managed to escape to Israel where he was arrested for illegal entry in June 1962. He was refused entrance by the Minister of Interior on the ground that he entered Israel on false pretences and was carrying a false pass port. He was deported by Israel, but on way to New York *via* London he slashed his wrist and was taken from London Airport to Willingdon Hospital, Middlesex. He was granted writ of *Habeas Corpus* and he appealed to the British Home Secretary for political asylum. Had he been a Russian or an East European absconder, he would have been granted asylum at once. But a fugitive from American justice, the Home Secretary rejected his petition and even ordered that he be deported. He instructed the Israeli airline El Al to fly him to America but the airline refused to oblige. The Home Secretary's order of deportation was challenged under article 20 of the Aliens Order 1953 and Soblen's lawyers applied for a second *Habeas Corpus* writ. In the H [illegible] upheld the Home Secretary's or[illegible] again in the Court of Appeal by [illegible] Judges. That, after a vain appeal to the Home Secretary by Dr. Soblen, was the end of the matter.

Now in this case, it was American pressure which was responsible for the Home Secretary's order of deportation. It is known that President Kennedy in a direct telephone conversation with Prime Minister Macmillan impressed upon him the desirability of deportation of Soblen in the interest of Anglo--U.S. friendship. The Economist aptly wrote, "The Court's decision is doubtless technically defensible but it seems to illustrate once again the length to which British Judges will go to accommodate the policies of the executive." This case suggests that even in a country like Britian, the cold war has seriously undermined the foundations of Rule of Law. Personal liberties in Britian have been largely the result of judicial decision over a number of centuries, of the courage and incorruptibility of judges in standing firm against executive encroachment. The courts traditionally refused to accept a plea of state necessity or to condone executive action if illegalities have occurred. Soblen's case suggests that the spirit of the Rule of Law is under fire now.

Rule of Law has also been attacked by the increasing powers

of the Government, which has meant increasing interference with the rights of the individual in many spheres of life. Enormous powers may be delegated to the Minister against whose orders a citizen may be defenceless. These powers may constitute a more complete control over individual liberties than was ever possessed by a monarch in the past. A Minister may be given a discretionary law-making power which cannot be challenged by the Courts. And yet there seems to be no method or procedure by which a departmental act can be challenged before some impartial body even if the act seems flagrantly wrong. The growing use of Administrative Tribunals also implies a curtailment of individual freedom. It is true that those powers of the executive are not exercised arbitrarily and that none is punished except for offences committed. Every one who cannot afford to pay for legal representation is granted legal aid; the accused has the right to hear and to cross-examine the witnesses for the prosecution, to call witnesses on his own account and to address the Court. All crimes known as indictable offences must be tried in a superior court before a jury. The law of evidence gives as full a protection to the accused as possible. The right to apeal is very much there. The judiciary is, on the whole, independent and honest. The legal profession is learned, fearless and freedom-loving. The chief aims of the British penal system are deterrence and reformation. The principle underlying the system is that its effectiveness depends less on the punitive treatment of the detected offender than in its total impact-fear of detection, public trial, conviction and the possibility of punishment, whether by imprisonment or otherwise,. The treatment of offenders is, therefore, based, as far as possible, upon measures for the social rehabilitation of the offender rather than upon measures intended simply to punish the offender for his crime.

This whole structure rests, ultimately, on the responsibility of the Government to the people and, therefore, the desire of the Executive to act in accordance [illegible] limits to the operation of its pc[illegible] holds civil rights to be essential, [illegible] in this area. Even the bureaucracy cannot do much to infringe civil liberties. Witness, for example, the implications of the Crichel Down Case.[1] In this case a few civil servants evinced an attitude of hostility towards a land-owner of Crichel Down (Lt. Com. Marten). The Woods Committee appointed to consider their cases stated :

> "There is no defined set of rules by which the confidence of the public in the administration of Government Departments can be secured and held. Incorruptibility and efficiency are two obvious requirements. In the present case corruption has not been a question; inefficiency

[1] *Public Administration* Royal Institute of Public Administration, Vol. XXXII winter 1951, pp. 389-401.

has. Beyond that it is difficult to particularize. But the present case seems to us to emphasize one further factor... In present times, the interest of the private citizens are affected to a great extent by the action of Civil Servants. It is the more necessary that the civil servant should bear constantly in mind that the citizen has a right to expect, not only that his personal feelings, no less than rights as an individual will be sympathetically and fairly considered." Later on, the Permanent Secretary to the Treasury Sir Edward Bridges, called attention of all civil servants in a letter to the following :

"The circumstances that led up to this report have brought forcibly to their Lordship's attention as to that of the country as a whole, the need for constant vigilance to ensure respect for the rights and feelings of individual members of the community who may be affected by the works of Departments. The confidence of the public in the administration of Government Departments depends on this vigilance."[1]

We may thus, conclude that in Britian the liberal democratic ideals so deeply embodied in society, constitute the ultimate obstacle to destruction of civil liberties in any fashion other than by overwhelming force.

FUNDAMENTAL RIGHTS IN OTHER STATES

France has been the traditional home of liberties. The constitutional law of 3rd June, 19 [illegible]
to prepare a new Constitution, [illegible]
principle that the judiciary must r[illegible]
ensure respect for basic liberties a[illegible]
1946 and in the Declaration of th[illegible]
refers. The Preamble to the Con[illegible]
refers to these rights. The motto o[illegible]
Equality and Fraternity" and its principle is government of the people, by the people and for the people.[1] Article 66 affirms the principle of *Habeas Corpus* and charges the Judiciary with the duty of applying it. All Parties are enjoined to respect the principles of national sovereignty and democracy.[3] The civil and political rights guaranteed in France include the equal rights [illegible] the freedom to organize Trade Union activities, [illegible] strike within the framework of the laws that govern it, and the freedom to participate in collective bargaining to determine working conditions and in the management of enterprises. The

1 *Ibid.*, p. 397.
2 Article 2.
3 Article 3.

Constitution guarantees to the individual and the family, the conditions necessary to their development and secures to the child, the mother and the aged worker, protection of health, material security, rest and leisure. Every human being who, because of his age, his physical or mental condition or cause of the economic situation, is unable to work, has the right to obtain from the community the means to lead a decent existence. The Constitution also ensures equality of all Frenchmen in respect of the burdens resulting from national disasters, and equal access to all citizens to education, professional training and to culture. The establishment of free and secular public education on all levels is declared a duty of the state. Discrimination on the basis of race or religion is ruled out and the constitution guarantees to all equal access to public service and the individual or collective exercise of the rights and liberties guaranteed by it.

The basic difference between the French guarantees of rights and the Anglo-American system is to be found in the Court procedure. In France, neither the accused nor any one else may refuse to testify on the ground that he may incriminate himself. The Judges in America and England, while deciding cases, take into account case law and precedents; in France, they decide each case on its merits. The Judges are not required to undertake a long and arduous study of the case law, are not selected from the bar, but are freshers from the Law Colleges. There are the administrative Courts in France, which secure speedy justice and cheap justice.[1] They furnish cheap and quick means by which the citizen can sue the state for damages or seek relief from the illegal or improper acts of officials.

In Italy, personal liberties had been mutilated by that fascist gangster—Mussolini, in every possible way. The New Constitution (Jan. 1, 1948) therefore, devoted to securing the fundamental freedoms of the individual—freedom of the person, inviolability of a man's home, freedom of speech, freedom of religion, secrecy of correspondence, freedom of the press, freedom of assembly, freedom of movement inside the country and freedom to settle where they please.[2] The liberty of the people is protected by the constitutional position of the judiciary. The constitution affirms the independence of judges and prohibits the setting up of special courts or special judges. The rights of the linguistic minorities are also protected. But there is "a serious constitutional crack in the ramparts of individual liberty" in Article 7 which stipulates that the Church-state relations are based on the co-existence of two independent sovereigns and are to be regulated by the Lateran Pacts drawn up between Mussolini and the Pope in 1929. Those arrangements by which Mussolini brought the support of

[1] *See* M. G. Gupta : *Government of the Vth Republic of France*, pp. 57-65.

[2] In practice the fascist law is still enforced against unemployed people from the South who migrate to the northern regions in search of work. *See* Margaret Carlyle : *Modern Italy*, pp. 42-43.

Catholicism conflict seriously with the principles of religious freedom, separation of church and state and equality of citizens. "They provide for the establishment of Italy as a confessional state—a state in which marriage is regulated by canonical law and religious instruction is permitted through secondary school, while defrocked priests are denied certain privileges of citizenship in violation of guaranteed equality, and both church and state unite in appointing persons to the Catholic hierarchy. This clause of the republic's constitution is also protected against alteration by the Italian Parliament without consent of the Pope, who is thereby enabled to limit popular secular sovereignty." Thus seen, the non-Democratic past continues to haunt the new republic and that explains the scathing comment of Benedetto Croce : "I consider the insertion of the Latern Pacts in the Constitution a legal monstrosity."

In Scandinavian countries, civil liberties are effectively guaranteed. In Denmark, the Judiciary is independent of the control of the Executive although every detail of the judicial organization is determined by law of the legislature, which is binding on all courts. The legislature can do anything but the consti-

seizures are prohibited. The constitution guarantees equality among citizens by forbidding all laws extending any privilege to any person holding titles of nobility and by prohibiting the guarantees of new titles. There is, of course, no legal and orderly way to keep the Rigsdag from violating these safeguards except by the pressure of public opinion including the use of the ballot box. In Norway, there are not only guarantees against general infringement of individual rights but specific prohibition against certain types of legislation. For instance, it is provided that no law may be given retrospective effect. No private property can be taken for public use without full compensation. Freedom of press and trade are guaranteed. No titles of nobility can be granted. No one can be convicted except according to law or be punished except according to judicial sentence. The Courts have the power to nullify any laws infringing these guarantees. In Sweden, the legislature is supreme and the Courts cannot review the laws properly enacted. But the Judges can influence law-making through the Law Council (Lagradet) which consists of three judges of the Supreme Court and one judge of the Supreme Administrative Court, which acts as an advisory body on important proposed bills and whose opinion is transmitted to the Riksdag (the Legislature). Though advisory, the opinion of the Lagrad has tremendous influence on the Riksdag. But once a law is made, it cannot be challenged by the Courts on any ground. The Swedish citizen., therefore, depends upon the Riskdag rather than upon the courts to maintain constitutional

guarantees and the remedy against abuse of legislative power is the public opinion and the ballot box. The Constitution guarantees freedom of the press, and worship and the right to life, liberty and property and the right to privacy in the home. No person can be deprived of public office except through law and under judicial procedure.[1]

In Switzerland, both the Federal and the Cantonal constitutions guarantee those rights and liberties which are familiar and dear to the people of the Anglo-Saxon world—freedom of religion, creed, conscience and worship, marriage, press, speech, education, association, and assembly, establishment, trade and industry. The citizen is guaranteed the inviolability of private property , equality before the law, personal freedom and inviolability of the home. The extent of freedom here is as large as in the U.S.A. These rights cannot be violated. As Huber writes, "Should one of these rights be infringed, every individual citizen can lodge his complaint with the Supreme Court of the country, the Federal Court and if his complaint is well-founded it can even happen that a law approved by the people will be dropped."[2] Switzerland is a multi-racial society with diverse languages, religions and customs. On the one hand, these liberties are the sheet anchor of the linguistic, religious, political and social minorities; on the other, they provide for tolerance and democratic consensus. The citizens are equal in the eye of law and this, in practice, implies prohibition of the arbitrary treatment [illegible] affairs may be prohibited. Citizenship to a Swiss gives him both the right to take part in the Commune's government and to use communal property such as pastures and forests. A citizen of a a Commune is *ipso facto* a citizen of the Canton in which that Commune is situated and can vote for cantonal authorities. Cantons are required not to discriminate in their laws against citizens of other cantons, and for legal and official purposes, all citizens may use whichever of the four national languages is native to them. Every citizen has the obligation of undertaking compulsory military service, and the medically unfit and the very few who are exempt on other grounds pay a special tax, half of which goes to the cantons and the other half to the Federation. There is no place for conscientious objectors in Switzerland. The Swiss citizen is given a rifle and ammunition—his permanent possession and that proves that "no other government in the world express in so practical a manner its complete confidence in the loyalty and law-abidingness of its citizens."[3]

1 Ben A. Arneson : The Democratic Monarchies of Scandinavia., Chapter VI.

2 How Switzerland is Governed, p. 38.

3 Michael Stewart : Modern Forms of Governments, p. 134.

Finally, we may consider the position of civil liberties in Japan where in the Constitution of 1947, one finds a most impressive list of guarantees, but where in practice the society is still authoritarian. Apart from the preamble, the constitution provides in Chapter III "eternal and inviolate" guarantees covering as many as 31 articles (Art. 10-Art. 40) which is about one-third of the [illegible] to life, [illegible] litical, [illegible] ex, so- [illegible] have been given the right to choose their officials and to dismiss them Adult suffrage, and right of peaceful petition has been provided. Involuntary servitude has been prohibited. Freedom of thought, conscience, religion, assembly, press, residence and occupation have been guaranteed. Academic freedom is ensured and the state is enjoined to promote social welfare and education to all boys and girls. The people have the obligation to work. The workers [illegible] operty is [illegible] deprived [illegible] by law. Privacy of homes is guaranteed. Cruel punishment is forbidden. No person can be compelled to testify against himself and the accused has not only the right to a speedy and public trial by an impartial tribunal but is given full opportunity to examine all witnesses. Laws cannot be applied retrospectively and any person if acquitted after his arrest on detention may sue the state for redress as provided by law. The Supreme Court has the power to determine the constitutionality of any law, order, regulation or official act and the Judiciary is made independent of the executive.

But inspite of all these provisions, tradition of authoritarianism is still very much there and there is a great reluctance on the part of the people to utilize the judicial instrument to realize their freedoms. Indeed there are large number of people in Japan who have never heard of fundamental human rights. The Courts play a relatively minor role and the most eloquent testimony of this is the fact that there are less than 6,000 practising lawyers out of a total population of more than 90 millions.[2] One often hears in Japan of the parental sale of daughters into prostitution and of torture and arrests without warrants. Villages still practise "village boycott" so well known in India and this excludes individuals who had provoked the ill will of village authorities from the benefits of community life. Feudalism and bureaucracy still persist. The government is still paternal and it treats the people as if they are juveniles and delinquent.

CONCLUSIONS

From this survey, we can draw a few conclusions. It is obvious

1 For the text of the Japanese Constitution *see* Arthur Tiedmann : Modern Japan, Reading No. 15.

2 George Mc. T. Kahin : Major Governments of Asia, pp. 182-183.

that democracy and human rights do indeed require more than written statements to assure their survival. The supreme guarantee of civil liberties is a well informed and vigilant public opinion. An impartial, well-paid, independent and bold judiciary is absolutely essential for basic freedoms. The procedure has to be fair, speedy and objective. Then, again, real freedom requires equitable distribution of wealth and sound economic relations within a community. With the enormous expansion in wealth since the 17th Century expectations have been greatly extended. Men have become more aware of how one another live, not only as between class and class but as between continent and continent. They have been led to challenge the fairness of privileges formerly taken for granted. The sense that poverty, disease and ignorance need not be inevitable lot of most of the world's inhabitants and that they must be remedied by deliberate action, has led to the recognition of claims to certain minimum economic and social conditions as "human rights. It is now realized that right to property which is intended merely to protect a man who does no work in the enjoyment of a fortune inherited from an ancestor who acquired it by ruthless exploitation of labour, is hardly a democratic right. After all, the purpose of law is to prevent anti-social conduct. But if it acts more swiftly when such conduct invades property rights than when it is committed by property owners, it becomes a lawless law. In India, for example, I may have a more speedy and drastic legal remedy against a burglar who steals a jug from my table than against the landlord who neglects to repair the house I am living in. If I am a Commissioner of a Division, pettiest theft at my place will be promptly investigated. If I am just a citizen, it does not count. In Italy, "latifondi" cause more misery than does shoplifting, but the law moves more swiftly against the latter. The standards of justice applied to thiefs must be more rigorously applied to tax-evaders. Moreover, the influence of wealth on public opinion is very considerable. Freedom of Press [illegible] businessmen own [illegible] newspaper [illegible] Similarly [illegible] commercial interests influence broadcasting and television. How, then, can I make up my mind freely? Or how can I express myself effectively ? This is a problem which Democracies have yet to solve. We may thus conclude that for democratic freedom, it is essential that standard of life of the common man must be high, "for when the cake is larger, disputes about its division are less bitter." Education must be free and compulsory. This will make for national unity and tolerance and will nurture the tradition of liberties. Finally, the most important condition of freedom today is that we must be guaranteed peace. Threats of war invariably lead to curtailment of freedom, proclamation of emergencies, arrest of "the subversives", brutalization of people

and even sadistic experiments. In the absence of these conditions, legal and personal rights remain unreal, an independent judiciary remains a fiction and the doctrine of liberty in the arts, sciences and personal behaviour remains unprincipled and even immoral.

character, means and methods of justice, raise or lower a nation in the estimation of other people. The men who are to administer justice in the Courts, the way in which they perform their functions, the mode of their appointment, the terms and conditions of their service, these and other related problems lie at the heart of political philosophy. When we know how a state dispenses justice, we know with some exactness the moral character to which it can pretend. To a student of comparative government, one of the most important questions is as to the degree in which justice as defined by the law, is actually realized, both as between one private citizen and another and as between private citizens and members of the government.[1] A society without legislative organ is conceivable and indeed fully developed legislative organs did not make their appearance in the life of the state until modern times, but a civilised state without judicial organs and machinery is hardly conceivable. In the words of Chancellor Kent : "Where there is no judicial department to interpret and execute the laws, to decide controversies and to enforce right, the government must perish by its own imbecility, or the other departments of government must usurp powers for the purpose of commanding obedience to the destruction of liberty." In short, [illegible]
w [illegible]
n [illegible]
p [illegible]
[illegible] substitute for the courts of justice.

EVOLUITON OF THE JUDICIARY

The development of the Judicial Department may be traced along several lines : the line of judicial organisation, the line of the individual's status before the law, the line of procedure and punishment and so on. In a previous chapter we have already brought out the origins of justice and the gradual substitution of the law of self-help by dispensation of justice. We have also considered the gradual development of the law dealing with punishment. Here we will discuss the evolution of the judiciary as to its organisation and as to the status of the individuals before the law.

The administration of justice, which is universally regarded as a state function, was originally a private matter, the state having no machinery for its administration. In the primitive [illegible] settled [illegible]

Gradually the state entered the picture as the arbiter [illegible]

1 Sidgwick : *Elements of Politics*, p. 481.

and still gradually bcame the creator of the law, the adjudicator of disputes and the prosecutor and punisher of offenders. The political authority compelled payment for private injuries and viewed serious offences involving violence or disorder as offences against the state whose duty it was to maintain order and to punish crime. At first the judicial function was not clearly differentiated from other political functions, and was exercised by the Executive and his advisers, who, in addition to creating and administering law, decided disputes and punished offenders. However, as political business increased and political life became more complex, property rights became more complex, special officials who were expert in the law branched off from the other organs of administration and formed a distinct department. This process, however, was gradual, and historic remnants of judicial power, such as the power to pardon, are still exercised by the executive. As to the status of the individual before the law, in former times, there was no uniform law at all; nor were all equal before the law. Slavery was universal and slaves had few legal rights. Women were legally at the mercy of their husbands and children of their fathers. Society was often divided into castes or classes, with varying legal rights. Even in the middle ages, the clergy were a privileged class, with their own law and courts and the nobility possessed special rights and privileges. The growth of capitalist political democracy has now created the present legal theory that all individuals are formally equal before the law. This is called the principle of the 'Role of Law' to which we shall revert shortly. Along with this process, methods of trial and forms of punishment [illegible]

desire for revenge has been replaced by the ideas of prevention of crime, protection of society and, in some cases, the reformation of the criminal. Of course, modern penal systems still show survival of former methods. Capital punishment, for instance, is a form of barbaric retaliation and Lynch Law so common in America, is a reversion to the most primitive form of vengeance. But even now, as we shall shortly see, the entire administration of justice is tied down to a certain social and economic structure.[1]

FUNCTIONS OF THE JUDICIARY

The chief function of the judicial department is to discover the relevant facts in any case whether civil or criminal. In countries following the Anglo-Saxon Law, this function is commonly performed by the Jury, with the Judge primarily officiating over the Court procedure. In countries, which follow the French system of

1. Refers to Jenk *'History of Politics'* Chapter XI, and *'Law and Politics in the Middle Ages'*, Chapter IVO J. Q. Dealey in The Developement of the State pp. 183-186 has discussed the evolution and forms of punishment. Also' J. W. Jenks ,*The Principles of Politics*' p. 143.

law, however, the Judge takes a far more active part and often questions witnesses himself. After the facts of a case have been found and determined, the judiciary has to state the relevant law, to interpret it and to apply its penalties and remedies in all cases brought before them for their decision. This power is fundamental to the successful working of government, which by nature, is coercive and which must have authority to enforce by penalty its decisions. Thus, in deciding the disputes, the Courts investigate and determine facts, ask the parties to produce evidence, hear witnesses and sift the truth from a mass of detail on which the existing law is applied. But, if the existing law does not cover all the conditions and circumstances and is thus found inapplicable, the judges do not abdicate their authority. In such cases, they use their knowledge, common-sense and experience, derived from the book of life. The judiciary has also to prevent the infraction of the law and violation of rights; it has to issue injunctions or restraining orders by which it asks a party or parties concerned not to take further action in their affairs until their matter has been well investigated and considered by the courts. If these injunctions are violated, the party that has violated them is liable to be punished for contempt of Court. Another function of Courts is that they have sometimes to take up the administration of a property and for this they appoint Administrators for trustees, lest the parties concerned should misuse, it, if it is handed over to any of the claimants. Thus, the judges have to investigate the case, determine the facts, decide the issue, find out the law, prevent damages before they have been inflicted, through the exercise of equity and law, and administer justice.

Thus far we have considered the role of the judiciary in the disputes between one individual and another individual. Beyond these, the judiciary has also to decide controversies between the citizens and the state or between the citizens and itself. As we alluded above, it has to enforce the judicial process and the judicial orders. Any person disobeying an injunction may automatically be held in contempt of Court, and sentenced without a jury trial. Of course, ultimately, the power of enforcement resides in the executive, whose refusal to act may cripple the judiciary. More important is the duty of the Courts to consider the propriety of executive and legislative actions and in countries, having written constitutions, to decide as to the validity or constitutionality of the law of the legislature and orders and ordinances of the executive. This is what is called as 'the Doctrine of the Judicial Review'. Judicial review can exist only in a regime possessing the notion of a law higher than common or statutory law. It can, and does exist in countries (like the United States and India) where the Constitution is the supreme law; it cannot and does not exist in Britain, where the constitution is what the Parliament says it is. It may be pointed out that the power of the judicial review was not expressly conferred by the American Constitution, but was rather assumed and applied by Chief Justice

Marshall in the famous case of *Marbury* v. *Madison* (1803) when Marshall discovered a conflict between the constitution and the statute, relevant to the case. It is for this reason that the power of judicial review has sometimes been termed an 'usurped power.' The cases that are involved in judicial review are those in which it is alleged that a right, privilege, or immunity guaranteed by the constitution or laws, is being denied, and in which it is alleged that a federal or state law or a clause in a state constitution (in the United States) conflicts with the Federal Constitution. Whenever the Legislature travels beyond its province demarcated by the constitution, the judiciary can declare the legislative steps as *ultra vires* and null and void.

In addition to these duties, the judiciary can also exercise some powers and perform some functions not directly judicial, in the administration of criminal justice. It appoints certain officials, grant licences, appoints guardians and receivers for bankrupt corporations and companies, and it can handle and dispose of the asset [illegible] .rious writs such as the writ [illegible] imprisonment, the Writ o [illegible] to perform their legal duties, the Writ of Certiorari for removing the records of proceedings from an inferior Court or quasi-judicial authority to the higher Court, the Writ of Prohibition to prevent the inferior Courts from usurping jurisdiction with which they are not legally vested, and the Writ of Quo Warranto to prevent the usurpation of office by a person, who is not legally entitled to it. In some countries, the Courts not only decide cases brought before them, but also give declaratory judgments, stating what the law requires, when interested parties request such opinions. Similarly in many states, the Courts give advisory opinions on questions of law, when requested by the legislative or executive departments. For example , in the Indian Constitution, it is provided that if at any time, it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such nature and of such public importance that it is expedient to obtain the opinion of Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after hearing, as it thinks, fit, report to the President its opinion there-on. The President may also request the Supreme Court's opinion on any question or dispute between the Government of India and one or more states, or even between two or more states.[1] In the American Constitution, however, there is no such provision and the Supreme Court there has consistently refused to pronounce any opinion except as to the legal rights of litigants in actual controversies. All judicial interpretation of the constitution or the decision of the constitutional problems has, therefore, to be made in the ordinary course of litigation between the parties. Similarly, the Australian High Court has declined to give advisory opinion on the ground

1 Article 143.

that the fundamental function of the judiciary is to decide concrete cases ar
Canada, the
questions of l
tion and giving its opinion. In Britain, under the "Judicial com-
Council,
his pro-
ngdom.

the judges lay down new principles of law. There is a school of jurists, who maintain that when judges give decisions on cases not covered by definite existing laws, they are not creating law, but only discovering it, *i.e.*, they are finding the existing custom in regard to the question at issue and finally stamping it with their approval. This view is held by those who consider law-making by the Courts an usurpation of legislative functions. Now, under the English and American Laws, the judges have created an extensive body of common law, because they observe the principle that a decision once given shall be binding in future cases. Even in continental countries, where detailed codes exist which are presumed to contain the entire law and where judicial precedents are not binding in future cases, the quantity of judge-made law, specially of administrative law, is considerable. On this reasoning, the judicial organs of the state do not stand for mere interpretation of the existing law. True that the judge has nothing to do with the character of the law that is before him, and his
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when
or wh
by his knowledge, reason and good conscience. After all the judge does not live in a vacuum, and as a thinking intelligent being, he must have his convictions and the underlying philosophy of life. All of us have a stream of tendency, which gives coherence and direction to thought and action. No judge can escape that
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which he is considering and into the principles which he is formulating. When he is clearing up the doubts and ambiguities and straightening out the knots, he is trying to look forward into the future as he sees it. In so doing, he has a vision very much similar to that of law-maker. It is, therefore, too much to say that the judges do not legislate at all and that all that they do is to throw off the wrappings and expose the statute to our view. But it is equally erroneous to say that no one but a judge can make the law. The former view was held by thinkers like Coke, Hale

and Blackston; the latter view was advocated by writers like Austin, Holland, Gray and Jethro Brown. Gray argued that even statutes are not law, because the courts must fix their mearing. "The law", he said, "is what the judges declare", the precedents, statutes, the opinion of learned experts, customs and morality are the sources of the lawr.[1] Similarly, Austin argued that customs are not law until they are adopted by the Courts[2] According to Jethro Brown, a statute becomes real law only when construed. If this is correct, it will follow that even past decisions are not law, for the present Courts may overrule them; and indeed one may go even to the extent of saying that even present decisions are not law, except for the parties concerned, for, they can be over-ruled tomorrow. It will further follow that law never is, but is always about to be.[3] This view has been challenged by Cardozo. He argues that "a definition of law, which in effect denies the possibilities of law, since it denies possibilities of rules of general operation, must contain within itself the seeds of fallacy and error.... Statutes do rot cease to be law, because the power to fix their meaning in case of doubt or ambiguity has been confided to the Courts......The quality of law is not withdrawn from all prcedents, however well established, because Courts sometimes exercise the privilege of overruling their own decisions."[4]

It must be clearly understood that there is a very vast field where the law is so very clear that the judges have virtually no discretion. They have the right to legislate within gaps, but then, often there are no gaps. Where the gaps exist or where the law is unsettled, largely because of obscurity of statute or of customs or of morals, it must be frankly admitted that a sacred duty is cast upon the Courts to declare the law in the exercise of a power, which is frankly legislative in character. In such cases, he occupies the centre of the stage, as the principal actor; in such cases, he will listen to his own prompting, and he will keep his ears to those whispers which reach him straight from the corridors of history. But there are those areas, where his hands are tight, where there is no waste land and where there are acres already sown and fruitful. There the judge cannot legislate, for, the law already exists. In such cases he can act as a leader of the Greek Chorus interpreting and appraising the Drama; in such cases he can demonstrate artistry, but he will have to observe forbearance and faithfulness. Here, he [illegible] vator. Here he cannot affor[illegible] tunity of anticipating a doctri[illegible] but whose birth is distant." Here the watchword of the judge will have to be restraint imposed by law, precedent and custom. And if he travels beyond the boundary set by these, he will be clearly

[1] *Nature and Sources of Lau*, Section 276.
[2] *Jurisprudence*, Part I, p. 250.
[3] Benjamin N. Cardozo : *The Nature of the Judicial Process*, p. 126.
[4] *Ibid*, p. 126.

abusing the power and violating the law. If the violation is done wilfully, a legal wrong is committed and the judge may even be removed and punished even though the judgement, which he has rendered, may stand.

The judicial branch of the government is also responsible for protecting the fundamental rights guaranteed by a constitution. The chief guarantee which the citizen possesses is the supremacy of law which will maintain his right of appeal to the Courts for protection coupled with assurance that he will thereby get justice. And the efficacy of the Courts will, of course, rest upon the uprightness and impartiality of the judiciary and its freedom from any control by the executive or legislature, which might conceivably endeavour to interfere with its work. Again, in a Federal Constitution, a division of power is absolutely essential. Since, such division must be reduced in writing and since the language is ambiguous, it is certain that in any federation, there will be disputes about the terms of the division of powers. But, since this division cannot be dependent upon the central government or the regional governments alone, it follows that the last word in settling disputes about the meaning of the division of powers must not rest with either of them. It must, that is to say, rest with the Courts. It must be borne in mind that all constitutions, whether they are in written or unwritten form, rigid or flexible, are continually changing and becoming adapted to the new ideas, new problems, new national and international forces. "Constitutions must grow up, if they are of any value; they have roots, they ripen and they endure. Those that are fashioned resemble painted sticks planted in the ground; they strike no roots; they bear no fruits; they swiftly decay and ere long perish." In this growth, the judiciary plays a very important *role* through its interpretations.

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on the complaint of one who has availed himself of its benefits. In *Nainsukh Das* v. *State of U.P.* this principle was followed by the Indian Supreme Court, for, here, the applicant sought to have the Municipal election set aside even when he had participated in them. Although the Court refused to make the order prayed
for in this case, it did pronounce u
impugned legislation and held
principle, which is often observed,
to be valid unless it is proved invalid. In India, the Court has also taken the policy of the legislature and other deeper considerations at stake into account when examining the validity of an administrative act. Another field of judicial review is provided by delegated legislation. In the United States "unconfined and vagrant delegation, not confined within banks that keep it from over-

is the sanctity of the judicial process, which must be able to withstand the winds of ruthless change by its sense of rectitude and with the strength born of ability and independence. One of the most important elements of the judicial process is the principle of stare-decisis, which is the every day working rule of the Anglo-American systems of law. In France, it is the legislator, who is the Hero; in Britain, America and India, the judge is the living oracle of the law. Here he looks upon the precedents as the beacon light, enabling him to tread his path. At the back of precedents lies the basic theory of conceptions which underlie the postulates of judicial reasoning, and farther back are the habits of life, the institutions of society, in which those conceptions have their origin and which, by a process of interaction, they have modified in turn. The basis of stare-decisis is the adherence to custom and the conviction, that free judgement has a generative power and a directive force for future cases of the same or similar nature. It is on this logic that the whole body of Common law in England has evolved. Across centuries, the rules and principles of case law have been retested and restated "in those great Laboratories of the Law—the Courts of justice." [illegible]

[illegible] principle is to move and develop. If a group of cases involve the same point, the parties expect the same decision. As Miller has put it, "it would be a gross injustice to decide alternate cases on opposite principles. If a case was decided against me yesterday, when I was defendant I shall look for the same judgment today if I am plaintiff. To decide differently would raise a feeling of resentment and wrong in my breast; it would be infringement material and moral, of my rights".[1] It thus happens that judges and lawyers maintain that a case is usually best decided by the application of the law as declared in earlier cases to the case in Court. But a case may be different on its facts, or one analogy better than another, or a void may exist, which enables a judge to legislate, particularly, when the phrase to be interpreted is as broad as Inter-state Commerce in the Constitution of the United States or reasonable restriction on fundamental rights in the Constitution of India. In such cases the Courts try to maintain that they are not departing from their previous decisions. Here they try to distinguish the new case from the old. As Mr. S. R. Sharma has put it, "in one case they may hold that the right principle under- [illegible]

lying that decision to the precise question involved therein and distinguish the new case from the old. As the Supreme Court observed in *Gurbachan Singh* v. *State of Punjab*, on facts, no two cases can be similar. A new interpretation may, therefore, be based on meticulously distinguishing the facts in one case from

1 *The Data of Jurisprudence*, p. 335.

another. Occasionally a Court may interpret an old decision in such a way as to put into its shell a new stuffing. Homage, thus, continues to be paid to precedents without allowing them to stifle social evolution."[1]

Another essential element of the Judicial process is the uniformity and impartiality of the law. There must be nothing in its action that savours of prejudice or favour or even arbitrary whims or fitfulness. But uniformity obviously does not mean a mechanical symmetry. The element of certainty in law must always be balanced against consideration of social welfare and fairness. It is here that the creative role of the judiciary comes in and if this rule is to be applied successfully, the judge must behave [illegible] A law is not only to be inter- [illegible] but also wisely and sympathe- [illegible] law can always be found in the facts of social and economic life, the social and economic needs of the community. All this will be possible if the judge keeps in view the standards of the community, the values of the times., Jurisprudence that does not bear an organic relationship to peoples expectations and aspirations, degenerates into a system of mere sentiment or feeling. As Seminar said: "A judicial judgement should be a judgment of objective right, and no subjective and free opinion; a verdict and not a mere personal fiat." As far as possible, a judge must refrain from imposing his own idiosyncracies on the society, although at times he will have to undertake the task of raising the level of prevailing conduct. This will call for a duty to act not in accordance with the customary morality, but in accordance with the highest standards which a man of the most delicate conscience and the nicest sense of honour might impose upon himself.

In the ultimate, analysis, then, a judge has to voice the dictates of a vague divinity; the momentum of his utterances must be greater than any which his personal reputation and character can command. In the words of Learned Hand: "he must preserve his authority by cloaking himself in the majesty of an overshadowing past; but he must discover some composition with the dominant trends of his time—at all hazards he must maintain that tolerable continuity, without which society dissolves and men must begin again the weary path up from savagery."[2] A judge should be able to get rid of himself and look back and peep forward; violence, hatred, envy, jealousy or ill-will is alien to the task he has accepted to perform. This, in fact, is more important even than learning or industry. If he can be reserved, unassuming, retiring sort, and serene, he fulfils the idea the society has sought about. He has to resolve the conflict which is sometimes created between his conscience and the technical rules and laws. Some say that he

1 *The Supreme Court in the Indian Constitution*, p. 222.

2 *The Spirit of Liberty, Papers and Addresses of Learned Hand by Irving Dilliard*, p. 130.

ought not usurp the power of government and that he must strictly adhere to the letter of the law; others maintain that he must follow the dictates of his conscience. Really speaking, there is no contradiction between the two, if we correctly understand the meaning of the law. After all, law is the command of the government and it must be ascertainable in some form if it is to be enforced at all. This command is always in the form of statutes written with great care and detail. But it cannot provide for all situations, for no one is so gifted with foresight that he can define all possible human events in advance and prescribe the proper rule for each. Take, for example, a motor accident, a collision between two cars. Who can say before-hand what each driver should, or should not do, until all the circumstances of the particular case are known? The law leaves this open with the vague command to each that he shall be careful. What, being careful means, it does not try to say; it leaves that to the judge, who in this case may happen to be a jury of 12 persons, untrained in the law. That is the case where the appeal is almost entirely to the conscience of the Tribunal. What, then, is the Judicial process? How does the judge proceed in such cases? In our view, in such circumstances, the judge takes the language before him, whether it be from statute or from the decision of a former judge and then tries to find out what the government or his predecessor would have done if the case before him had been before them. This is called discovering the intent of the statute or of the doctrine. But, is it really so? The men who use the language, *i.e.*, who made the law or the decision, did not have any intent at all about *this present case; it had not occurred to their minds.* Strictly speaking, therefore, it is impossible to know what they would have said about it. All they have done is to write down certain words which they mean to apply [illegible] To apply this literally may [illegible] general meaning, or leave [illegible] to suppose they meant to provide for. Thus, it is not enough for the judge just to use a dictionary. Just as there are political dynamics, there are judicial dynamics and in both you have to look backward as well as forward. The dictionary school of the judicial process would insist that the judge must follow the letter of the law absolutely and he must stop where the words stop. The other school maintains that he must look inward and should do what he would think right. In fact, this is inevitable when one is interpreting a written [illegible] Hand: "When a judge tries to [illegible] would have intended which it di[illegible] things which he thinks it ought to [illegible] to substituting what he himself [illegible] which a judge must observe, is th[illegible] than he is sure the government would have gone, had it been faced with the case before him. "If he is in doubt, he must stop,

1 *Op. Cit.*, p. 108.

for he cannot tell that the conflicting interests in the society for which he speaks would have come to a just result, even though he is sure that he knows what just result should be. He is not to substitute even his juster will for theirs; otherwise it would not be the common will which prevails, and to that extent the people would not govern. It is, of course, a difficult thing to achieve, but great judges have always done it and will always do it."

It is, thus, the function of the judicial process that law be not only administered but also moulded. The judge holds the scales of justice and he exercises the major role in shaping our juristic theories and practices. Even though he may not be the master craftsman of our legal policy, he [illegible] the judicial machine and the fi[illegible] this reason that Justice Cardozo [illegible] of justice except the personality of the judge." No system can rise higher than the judges who govern it. Strength, ability, knowledge, and character are essential to a good judge, and as Judge Storey said : "where weak courts deal with criminals, crime goes unpunished, lawlessness flourishes, men lose their respect for the Courts and resort to lynch law, and civilization suffers."[1] Just as we say that a judge should neither solely administer the law, nor listen exclusively to his own conscience, similarly we may also say that a judge should neither be a Hanging Judge nor a Defendant's Judge. He must balance the public interest in prompt and efficient prosecution with the individual interest of each defendant in a fair trial.

It is a very difficult situation indeed, because his hands are tight at every turn. In countries where there is a Jury Trial, he has little or no control over the selection of the jury, his instructions to it are perfunctory; he is not allowed to sum up the evidence for the benefit of the jury, nor command upon the credibility of witnesses; he cannot prevent the abuse of witnesses on the part of Attornies; he cannot curb the lawyers beyond a certain limit. The law of procedure for him is made by the legislature. In a country like India a District Judge can be elevated to the High Court Bench on considerations other than merit; a member from the Bar can be appointed to the bench on dubious considerations; a High Court Judge can be raised to the Supreme Court by the Home Ministry of the Government of India; A Supreme Court Judge, on retirement can be appointed a Governor of a State by the Union Government. In such a setting, a man can easily fall. And, indeed, if he does not it is due to the strength of his own character and not the strength of the system. The system is obviously bad; it exalts expediency and popular appeal and debases merit. At any rate, it makes the Judge an object of public suspicion and ridicule. These observations, mutatis mutandis will also apply to the administration of justice in America. In this process, the Bar plays a very important role. In India, the

1 *The Reform of Legal Procedure*, p. 176.

Advocate-General in the States is half lawyer and half politician; with the political influences he commands he can make or unmake a judge. In the United States, the lawyers have secured the enactment of measures in the legislatures, whose, effect is to debase the judge and elevate the lawyer to the position of dominance in the Courts. They put the witr esses in the United States of America to a disgraceful treatment. In England and Canada, the witness enjoys the protection and guidance of the judge and there is no 'no brow-beating, no attempt to confuse, no unjustified insinuations with regard to his vercaity or character." In the United States, the position is much worse. As Callison has written: "the judge sits gagged, while the witness is badgered, bull-ragged, and insulted. Silly technical objections are frequent; relevant testimony is suppressed; and the timid witness confused to the point of in-coherence.........This sorry spectacle is the logical outcome of the debasement of the judge and the elevation of the for-hire lawyer to the position cf master in the Court room. The treatment to the witness by the American lawyer is a shame and disgrace.. in no other country in the world is the shameless abuse of witnesses tolerated."[1]

Much, therefore, depends on the quality of the Bar. The English lawyer is meticulously decorous; the slightest misconduct on his part at the trial brings sharp reprimand from the judge. Punishments and fines are provided for a number of offences. In America, it is the opposite and there the lawyer is the master of the Court. In our judgment, India has begun to follow the United States rather than England. It is a pity that the past tradi- [illegible] losing their force in this country. [illegible] success of the lawyer is measured [illegible] wins and the amount of money he pays in the Income Tax and not by the degree of justice he secures. And, since victory or defeat would depend on the evidence given, the successful lawyer is careful that only such evidence is produced as is favourable to his case.

And, what shall we say about the basic qualifications of a judge in a correct judicial process? In the first place, he must have a firm grasp of the basic principles of law and a workable knowledge of the philsophy of law, if not of all the laws passed by all the legislatures. In India and the United States, it is not merely the Central Legislature, which makes the laws, but also the Legislatures of the States. It is not merely the Supreme Court whose decisions have to be studied, but also the judgements of the High Courts of the States. It can be a difficult achievement. In Britain, there is only one law-making body and the task of the judge is easier. Apart from knowledge of the law, a judge must have intellectual honesty and moral and economic freedom. He must be free from obligations to special interests, free from the control of political bosses, and free from dogmatism and

1 *Courts of Injustice*, p. 104.

narrow conventionality. He must be animated by the spirit of justice and must be essentially a doctor of human relations. The mere knowledge of statutes, codes and techniques and procedures is, therefore, not enough; "These are the dry bones, the husks, the habiliments of justice." He must be a student of the larger university of life; he must keep his hand on the pulse of society; he must keep his ears down to the ground so that he may hear the rumblings of the common men; he must understand human behaviour and the motive of human conduct, and if he is to be this, he must understand basic things of the social sciences and medical jurisprudence. But all this will be possible if he really possesses the judicial temper which, of course, is partially a matter of exprience. He must have carefully studied the theories of crime and the theories of punishment. He must keep abreast of the numerous scientific and social changes that are taking place today, so that he may be familar with the terriffic tempo of change. This will enable him to get over his natural conservatism and natural hostility to change. Indeed Justice Cardozo went to the extent of suggesting that the judge may be provided with research assistants to acquaint him with the facts, which, he has neither the time, nor the disposition to acquire.[1]

If the Bench is the dome of the judicial process, the Bar is it's base. Most of us look upon the lawyer as a trouble-maker. In fact, his origin is unknown. Probably "he had his beginnings in the ancient customs, which prompted an accused to bring with him into Court a friend or friends, whose presence lent moral support and who, in the case of timidity or other impediment, spoke for the accused." In ancient Greece, no lawyer was permitted to appear before the Courts to defned persons charged with crime and the litigant personally presented his case. He could, of course, consult the expert in law. At a later stage, the use of the advocate was allowed. In the Roman Courts, the Juris-consults gave legal advice in order to acquire name and fame. In ancient India, the lawyer was not known and even in medieval times, there is no trace of him. In the early English Courts, the accused could bring an influential friend of his in order to produce something like a moral effect. These persons, who could talk fluently, later on thought of making capital of their influence and of the glibness of their tongue and began to represent the accused persons for money. Still later, it was realised that such persons must possess intimate legal knowledge. That is how the barristers and solicitors appeared in England. From England, this tribe travelled on to distant lands, which formed part of the British Empire. Seventeenth and eighteenth century capitalism encouraged the growth of this profession. The early industrialists needed legal guidance in order to carry on their brigandage and the lawyers entrenched themselves in practically all departments of government. It was not before 1873 that the lawyer in England and the United States was put in his proper place. Thus, the

1 *The Growth of Law*, p. 116.

social origin of the lawyers has nothing to recommend it. They are held in low esteem in society, because they were notorious for bad practices. They were known for fomenting quarrels rather than composing them. With the expansion of industry and [illegible] was needed. Their number [illegible] old prejudices disappeared [illegible] in society. Legal guidance became a business. Whenever society had to face serious crisis, this class started making gains out of it. The lawyer became an ally of the exploiter. In course of time a lawyer became a symbol of legal scholarship.

In Englard, the legal profession is divided into two classes —barister and solicitor. The former argues the case; the latter deals with the client, prepares the case and hires the barrister to present it in Court. On the whole, the English lawyer is under a strict control in nis conduct in the Court. He has to play the game according to the rules. As Francis Fisher Kane has put it : "the barrister must walk in the straight and narrow path or take the consequences ar d the consequences may be a reprimand from the Court that will, in the end, cause him a serious loss of income, for solicitors will not give briefs to the barrister out of favour to the judges." In France, the control is more strict. Requirements for admission to the bar are very rigorous. Like the English solicitor, the French Avoue prepares the case for trial and the Avocat presents it in the Court. No one is admitted to the profesion whose character and merit are not approved by the Order of Avocats. The Order of Avocats is an independent body and is governed by its own Council under regulations, which are sanctioned by the state. In the courts, the judge is the absolute master and no question can be put by the lawyer to the witness without the consent of the judge. In Canada also, the judge is the master in the Court room and the profession is made by law "a close corporation" with a complete control over the education, the qualifications, the number and the conduct of its members in and out of Courts. The Provincial Law Societies have the power of discipline over the lawyer. In India, while the judge is, in theory, the master in the Courts, in practice, the lawyer plays a very powerful role in the Courts. In the Courts of the Magistrates, particularly, the legal profession is dominant. In the United States, the judge must carry favour with the political lawyer, whose influence is necessary to the achievement of re-election. Just as in India, so in America, the judge can return to the practice of law on retirement. In Canada and England this is impossible. This means that in India one can use the judge-ship as a stepping stone to lucrative practice. This practice, is, in fact, a standing scandal in the United States, where one can come across "the pettifogger, the shyster, the lawyer-criminal and the criminal-lawyer." Not only witnesses are insulted there, but the judge cannot instruct the jury either. These instructions are prepared by the Attornies, who can always appeal to the prejudices, passions, and

ignorance of the jury. In England and Canada, the lawyer, in addressing the jury, may only sum up the evidence actually present in Court; in the United States, as Callison writes "the Attorney may and does do everything short of clubbing and gassing the talesman."[1] The trouble in India and the United States is that the incompetent, dishonest and debased lawyers cannot be easily eliminated from the profession. While the lawyers of England, France, and Canada are hand-packed, thoroughly tested and tried before admission to practice, in America, the gates stand wide open and "the riff-raff, rag-tag and bob-tail of creation" enter like the rabble going to a dog-fight. This, more or less, is also true of India. Any one who finds himself unfit for any other job, has repeatedly failed at the competitive examinations, has no resources and connections which might take him to some business firm gets into the evening Law classes of some University and without attending them (proxy is there is answer for him) can take the passport to the profession. The 6-month training in a Lawyer's chamber is a mere formality. Certificates can always be obtained from obliging seniors. After a couple of years a sum of Rs. 250—can be deposited to get on the Rolls of Advocates. The gates of the profession are thus as wide open as the wide gates of hell. We insist on the training of doctors, engineers and teachers but it is different with the legal profession. We have no real test either of the moral character or the extent of the general education of the applicant nor is there any real test as to the applicant's knowledge of the law and methods of its administration. There is no test at any stage in the training. Recruitment methods of teachers in most of the university Law schools are most dubious. There are examples of part-time teachers who having failed at the bar supplement their incomes by delivering stale lectures or dictating useless notes to the students. In India the lawyer stands for all that is usually considered bad in society. It was for this reason, to a great extent, that Gandhi left the profession, for the system here really repels the ethical lawyer. He uses the worst methods to have a client. His only concern is money, not justice, or at best money first, justice second.

Another important factor of the judicial process is the rules of procedure and the basic notions of justice. One such notion is that the accused must be presumed to be innocent until his guilt is proved. Now, this notion, in practice, is a complete fiction in the United States of Ameri
position is not very much
by the District Magistrate i
to them is that they must convict. Indeed, we have heard some of the magistrates telling us that justice is done by the judges and that the Magistrates are not for it. If the Magistrate Judge starts on this theory, the accused is condemned even before the trial begins. Indeed, no practical man presumes an arrested person to be innocent, certainly not the arresting officer, who is a

1. *Op. cit.*, p. 212.

practical man. Another notion of justice is that the witness mus state the truth and nothing but the truth. A lawyer knows that i is a damn lie. A witness, speaking the truth, is a rare commodity In our view, most of the time of the Courts in India, at any rate, i consumed in trying to discover what part of the evidence is true Witnesses can be threatened outside the Courts. They are, i most of the cases, tutored. If a lawyer can successfully confuse a witness in the Court, that will constitute his supreme triumph Thus, the theory that a case is decided on evidence, is absolutel unrealistic. Most of the criminal trials are a matter of chance and the judicial system, at least in India, will be found to be on the side of the superior skill and a longer purse. If law is considered a game, whose motto is "win if you can," the lawyer will always try to win by hook or by crook. But, if law is treated as an instrument of justice, it will be different. Can we, then, eliminate the lawyer from the judicial process altogether?

In order to answer this question, we will have to go to the basic purposes a lawyer serves, and these are, to help the Court to establish the facts, and assure to his clients a fair trial. The problem of eliminating the lawyer in a country like England or France does not arise, because, there, these purposes are well served. It is only in countries like the United States or in India to a lesser extent that this question would be of some interest. Let us frankly admit that with the growing complexity of life, lawyers are indispensable. All that we can do is to reduce their need and this can be done to a certain extent if the procedure of law is simplified so that it can be easily understood by the peasant, the clerk and the factory worker. That done, the plain, honest man can straightway go to a Court and tell his story to the judge. Another step to make the judicial process available to the average man, is to reduce the Court fees to such a level that it no longer remains prohibitive except for the millionaires. There must also be close screening of the legal profession before anybody is permitted to enter. The Law Colleges and the Law departments in the Universities must be made to do their work more seriously. Yet another step that we might suggest, is to make the lawyer responsible to the government for his legal practices. A lawyer must not be permitted to waste the time of the Courts under any pretext. The poor

TENURE

Another important element of the judicial process is the tenure of the judge. In theory, a judge can retire voluntarily or can be made to retire at a fixed age, or be removed by judicial action, or be removed by an executive action, or be removed by legislative action or be removed by popular vote. Of all these methods, two are most popular—retirement at a fixed age and removal by a special majority of the legislature. In Britain a judge can serve

as long as he considers himself physically fit. This, of course, is most dignified.

PACKING BILL

In the United States, the usual age of retirement is 70. In India, the judges of the High Courts are made to retire at the age of 60, although the Union Parliament has now decided to raise it to 62 (proposed Fifteenth Amendment). The Supreme Court judges are made to retire at the age of 65. The judges can, of course, be removed on joint address of the two Houses of Parliament in Britain as well as in India. Now it is diffcult to understand that persons who are called upon to do similar work in the High Courts, and in the Supreme Court, are made to retire at 62 and 65 respectively. If one is considered physically or mentally unfit to carry on as a judge of a High Court, how can he be considered as mentally and physically fit to do the same type of work in the Supreme Court? This is absolutely indefensible. It is, in fact, a dangerous loop-hole in the judicial process of India. Now, a retiring age is good in a democracy, for, in general, at a certain age an average judge is less and less able to meet demands, particularly those of a new era made upon him. There are, of course, judges, who, even at 80, are capable of doing magnificent work. But in general, beyond 65 or 70 years a man is overpowered by a sense of the past. Elderly men are more likely to hate at sight any analysis to which they are not accustomed and which obstructs repose of mind. A judge's experience of life determines his attitude to the problems of law. Most people's philosophy, both in its conscious assumptions and its much more significant unconscious prejudices, is fairly fixed at 40, and 30 years later, the average judge would belong to a generation of which the general outlook is very different from his own. The provision for a fixed age of retirement for a judge is, therefore, to be welcomed. But it is difficult to understand the discrepancy in the age of retirement in India. The danger in this discrepancy is that a High Court Judge, who is after all a mortal, may have the ambition to have a jump to the bench in the Supreme Court in New Delhi. This ambition will be perfectly legitimate. But in realising it, he may try to descend to those levels which, to say the least, may not be at all dignified. Recently in India litigations have ensued in which judges have sought further extension on the basis of incorrect age entry in their Matriculation certificates. These are unseemly controversies. A more dangerous flaw in the Indian judicial process is that the judges, after retirement, can be appointed to other posts under the Government of India. The fun is that while members of Public Service Commissions (quasi-judicial bodies, at best) are made ineligible for further employment either under the Government of India or under the Government of a State (*See* Article 319 of the Indian Constitution) except in very limited number of capacities confined to the Public Service Commissions themselves, there is no such prohibition as far as the judges are concerned. *Judges* of the High

Courts and of the Supreme Courts have been appointed to other posts in India. Now this will always tempt the judges to seek better prospects by delivering judgements intended to oblige the powers that be. It may not happen, but in any case, this definitely undermines the faith of the people in the judicial process. If the decision of a judge follows the path to his ambition, the judicial process is poisoned at its very source. We are not suggesting that this has happened in India. Justice Fazle-Ali of the Supreme Court, on retirement, was made a Governor; Justice Chagla of the Bombay High Court was our High Commissioner in London. Nobody can question these appointments. But the system is definitely wrong and must go.

Another factor, which may tend to undermine the judicial process is the tendency on the part of the executive to criticize the judiciary. The late Prof. Laski warned that the Executive and the Judiciary "must so far as possible, abstain from mutual criticism of each other's work." In the course of the debate in the Union Parliament on his motion to refer the Fourth Amendment Bill to a Joint Select Committee, the Leader of the House made remarks which were rather unfortunate. Talking about the balance of powers between Parliament and the Supreme Court, he said : 'The plea of some members that the powers of the Supreme Court and the High Courts must be more fully defended betrayed their lack of confidence in Parliament. It at least showed that their faith in Courts was more than in Parliament. So it was necessary to ensure that the scales of the balance were not unduly weighted one way or the other." What is more lamentable is that he made some remarks about judges whom it is easy to identify. H said, "Supreme Court judges gave expression to many views outside the Court precincts or after their retirement... Actually in these circumstances the former Supreme Court judges

Government did not want to acquire anything or requisition anything, the Courts in their wisdom had decided that this too was governed by the clause about compensation." It augurs ill for the future of a democratic state when its Prime Minister arrogates to himself the unprecedented right of commenting on the 'wisdom' of its courts with regard to their decisions. Even the expression of the hope by Mr. Nehru that "the Supreme Court would take full cognizance of the new atmosphere in the House and the country about this business of compensation and bear it in mind in interpreting in the future all cases related to it" is against the sound principles of parliamentary government. All these observations in fact amount to saying that the Supreme Court was blocking progressive legislation which Mr. Nehru's Government was proposing. A more recent example of an attack

on the judiciary is found in the proceedings of the Lok Sabha while the Civil Procedure Amendment Bill was being discussed. A certain member of the House observed that "judges lack the requisite equipment, are too intellectualized and are too much divorced from the life of the common man," and the Home Minister remarked that "the discussion in the House should serve as a warning to the judges."

Indeed, in other countries too the Executive Officers have at times made such remarks against the judges. Once an American Attorney-General complained that the construction placed by certain courts on a clause in the Espionage Act of 1917 was so narrow that its object had been lost. Mr. Nehru similarly complained that "the interpretation of the Supreme Court went against his intention and that of his colleagues who had drafted the article". In fact Mr. Nehru's observations are couched in stronger terms than have been used in modern times by any member of the Government in regard to any judicial decision, perhaps much stronger than even the attack of Daniel Webster in the *People* v. *McLeod*. His qualifying observation that his and his colleagues' respect for the Courts and their judgments has not lessened by even a jot does not make any material difference.

In September, 1962 the Chief Minister of U.P. was reported to have made sweeping remarks calculated to despise the authority of the judiciary in general. The Chief Minister referring to a letter to the Editor, written by Mr. Bind Basni Prasad, a retired Judge of the U.P. High Court, on the subject of Land Taxes was reported to have said that "the judges were mostly men of limited outlook, without adequate foresight, having been mostly concerned in their lifetime with interpretation of law" and that they displayed an utter lack of vision. This report became the subject of a sharp controversy among the members of the bar and one of the Bar Associations, formally passed a resolution resenting these observations made by the Chief Minister. Now all this does not redound to the credit either of the executive or the judiciary. These unseemly exchanges have the unfortunate results of lowering the dignity of the Courts.[1]

There are a few other important factors in the judicial process, to which attention may be drawn. It is not enough that there should be a fixed tenure for the judge; it is equally important that the tenure should be permanent. In most countries today, judges are appointed during good beahviour. Switzerland and most of the states of the United States of America are exceptions, Besides a permanent tenure, the capacity, learning, honesty and independence of a judge also depend upon the inducement of

1 Also refer to the bitter controversy between the Bihar Governor Anantassayanam Ayyanger and the Patna High Court Judges (April-May 1963). The Governor referred to the "disgraceful" conduct of lawyers and Judges; the Judges called these remarks as "having no value", *Link*, May 26, 1963. Also *see Patriot*, New Delhi Dak., page 5., May 15, 1963.

prospects and the conditions of service attached to his office. It is absolutely essential that a person who is entrusted with the duty of upholding the constitution of the country, protecting the liberty of the individual and administering even-handed justice, should be put above want. It is also necessary that the best persons of the Bar must find some attraction on the Bench. Unless the most qualified men are attracted to the Bench, the quality of the Bench is bound to deteriorate. In order to attract such persons to the Bench, it is necessary that the community should, in its own interest, agree to pay them adequately, keep in view the high fees commanded by those leading members of the Bar. who alone should be entitled to decorate the Bench. Not only the judges should be paid a decent salary, it is also essential that this salary should not be diminished during their continuance in the office. Thus, in the United States of America, Australia, Canada, Ceylon and Burma and other states, it is provided that the legislature shall fix [illegible] not be reduced to their [illegible] In the Indian Constitutio[illegible] High Court judges is fixed by the Second Schedule Part D of the Indian Constitution. The judges are entitled to such privileges and allowances and such rights in respect of leave or absence and pension as may from time to time be determined by or under law, made by Parliament. It is also provided that the privileges, allowances and rights of a judge shall not be varied to his disadvantage after his appointment. But the President is empowered to reduce the salaries of the judges during the period of Proclamation of Financial Emergency[1].

In addition to these conditions there are a few other matters [illegible] ninistration of justice. In the [illegible] as long as the existing system [illegible] be cheap. Even a ceiling on the fees of a lawyer may be fixed by law. Secondly, cases must be tried not behind the closed doors but in open Courts to which public has free access. Both the parties to judicial proceedings [illegible] ented by Counsel and have their [illegible] dge and the jury. The burden [illegible] in civil as well as criminal cases, on the accuser. The rules of procedure must ensure that guilt or innocence is established in accordance with the accepted maxims of the law in evidence. In all serious criminal cases the accused must be tried not by a judge alone but by a jury. Judgment must be rendered in open Court and the judges must give reason for it. In all legal proceedings there should be at least one appeal to a Higher Tribunal from a decision of a Court of first instance on a matter of law and to a very large extent on matters of fact, so that the accused person has the right to submit his case to the judgment of at least two Tribunals acting independently of each other.

1 Article 125.

The rules of procedure must, as far as possible, be framed by those who have had judicial experience. The Parliament may, of course, have the power to disallow them but at their source they should be formulated by a Committee of eminent Jurists. The judge must be the master of the Court supported by a body of rules designed to clear the path of effective justice. If the procedure is permitted to be reduced to mere technicalities, the result may be bickering and quibbling and even miscarriage of justice. The judge must not be subjected to political hazards and pressures and if this is to be a reality rather than a fiction, it is essential that they must be appointed on the basis of merit and merit alone. The lawyer must be available to the rich and the poor alike and he must behave as though he is really an instrument of justice.

Finally, if the Courts are really to be courts of justice and not of injustice, it is essential that preventive detention should, as far as possible, be avoided, and if it is found essential, it should be duly qualified. This calls for one or two comments.

PREVENTIVE DETENTION AND THE JUDICIAL PROCESS

As we stated earlier in the chapter on Civil Liberties, Preventive Detention and freedom are mutually contradictory. It is "the very negation of liberty and self-government." It can always be mis-used, because here the detaining authority is acting merely on suspicion. It can be abused to crush political opposition, *for you can always give the dog a bad name and hang him.* But then, it must also, be realised that the rule of law is not a Utopian conception of what ought to exist in some imaginary state of perfection, but of what civilized nations accept as the practical necessity of existence in the present state of the world. As Dr. P. K. Tripathi has put it: "democracy needs protection at both ends. *It needs to be protected against uncontrolled and excessive* authority in the hands of the governors. Equally does it need protection against internal forces seeking to subvert the democratic constitution, while sheltering their sinister organisation and pernicious activities under that very constitution. The possibility of such *exploitation of the provisions of the constitution against itself endangers the inescapable necessity of lodging in Parliament* and in the State Legislatures adequate powers to deal with subversion well in advance; it makes the power of preventive detention a necessity".[1] In fact provision for Preventive Detention exists not only in a young democracy like India but also in advanced democracies like England and the United States. In England provision for it was made under the "Defence of the Realm Act, 1914," which provided that "if the Secretary of State has reasonable cause to believe any person to be of hostile origin or association and that by reason thereof it is necessary to exercise

1 Preventive Detention : Indian Experience. *The American Journal of Comparative Law*, Vol. IX, No. 2 Spring 1960, p. 242.

control over him, he may make an order against that person, directing that he be detained". The English Courts could not interfere with an order of detention except where it had been made without good faith, the onus to prove which was on the person, who challenged the order. In the famous case, *Liversidge Sir John Anderson and Another*, 1941, Lord Atkin delivering his dissenting judgment observed . "I view with apprehension the attitude of judges, who on a mere question of construction whenever face to face with claims involving the liberty of the subject show themselves more executive-minded than the executive. In this country, amid the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respectors of persons and stand between the subject and any attempted encroachments on his liberty by the ... action is justified in law. ... might have been addressed ... King's Bench in the time of Charles I."[1]
Other judges, however, dismissed the appeal of Robert Liversidge. Lord Wright, in the course of his judgment, observed that "all the Courts, today, and not the least this House, are as jealous as they have ever been in affording the liberty of the subject. But, that liberty is the liberty confined and controlled by law, whether Common Law or Statute." It is, in Burke's words, "a regulated freedom." It is not an abstract or absolute freedom. Parliament is Supreme...In the Constitution of this country, there are no guaranteed or absolute rights. The safeguard of the British liberty is in the good sense of the people and in the system of representative and responsible government, which has been evolved. If extraordinary powers are here given, they are given, because the emergency is extraordinary and are limited to the period of the emergency." Lord Macmillan added: "the purpose of the regulation is to ensure public safety, and it is right so to interpret emergency legislation as to promote rather than to defeat its efficacy for the defence of the realm." This, in short, is the position of preventive detention, as far as England is concerned.

In the United States also, there is no provision for preventive detention in time of peace. But, in the Internal Security Act of 1950[2], provision for preventive detention in emergency has been made. The Emergency can be proclaimed, if there is invasion of the country, declaration of war by the Congress, and insurrection within the United States. Duri ... can detain "each person as to ... to believe that such person will ... conspire with others to engage in ... A person so detained is to be taken to a Preliminary Hearing Officer

1 G. LeMay, *British Government*, 1914-1953, pp. 331-32.
2 This is also called McCaran Act.

were ineffective in face of the Minister's statement of his belief and the Courts did not themselves enquire into the objective validity of that belief. This made drastic invasion into the Common Law and protection of liberty, and the internee, in an apparently hopeless position, had to resign his fate and wait for peace time conditions to be restored. Even in peace time, there are actions on which preventive or administrative detention may be exercised in Australia. For example, the Parliament has the power to commit for contempt. Here, the members of the House of Commons have a right to judge for themselves what is contempt, and to commit for that contempt by means of a warrant, which merely states that a contempt of the House has been committed, without specifying the nature of the contempt. Such a warrant is a sufficient answer to a writ of Habeas Corpus.[1] The Migration Act of 1958 also provides for arrest without warrant and even deportation. It also provides for the detention for any ship at any port for a reasonable time to enable an officer to search the ship. Similarly, the Crimes Act of 1959 provides for deportation of members of unlawful associations, who were not born in Australia. The Customs Act of 1901-59 provides for the detention of persons suspected of smuggling or of bringing prohibited imports into, or taking prohibited exports out of the country. Under The Children's Welfare Act of 1958 of Victoria, a child deemed in need of care and protection, may be apprehended without a warrant and taken before a Children's Court. If the Court is satisfied that the child is in need of care and attention, it may order that he should be admitted to the care of the Children's Welfare Department. In different states in Australia, laws exist providing for detention.

In Burma, provisions concerning preventive detention can be found in Chapter VIII of the Code of Criminal Procedure, under which persons who are a danger to society, such as habitual offenders, may be required to furnish security. If such security is not forthcoming, they may be committed to prison. Similar provisions can be found in the Opium Act, the Dangerous Drugs Act and other Laws. In 1947, the Public Order Preservation Act was promulgated by the Governor, which had its origin in the Defence of Burma Act. A person detained under this Act can apply for a writ of Habeas Corpus to the Supreme Court of Burma. A detention may be valid and regular if the authority concerned has followed the required procedure. If this has not been done, that detainee is entitled to be released even if there is sufficient ground for his detention. For example, an order for arrest must be in writing and an oral order cannot be validated by subsequent written order.[2] An order intended to have retrospective effect is also invalid.[3] A single order with respect

1 *The Speaker of the Legislative Assembly of Victoria* v. *Glass Per Lord Cairns.*
2 *Ah. Nywe* v. *Commissioner of Police*, Rangoon and another 1948, B.L.R. 737.
3 *Daw Aye Nyuni* v. *The Commissioner of Police*, Rangoon and one. 1949 B.L.R. (S.C.) 5.

The upshot of all this was that in 1940, in India, 25 thousand people were detained because of the individual Civil Disobedience Movement and in August 1942, 26 thousand persons were rounded up in a space of three or four days. At the end of the war, the preventive detention was not abolished and was in force when India obtained independence in 1947. Since then, on one ground or another, it has continued and it found a place in Article 22 of the Indian Constitution, to which we have already referred. The Constitutional position in India is that no person can be preventively detained unless there is an express law to that effect passed by the Indian Parliament or one of the State Legislatures. The detenu is to be informed of the grounds of his arrest as soon as may be, and must be given the earliest opportunity of making a representation against the order. No detention for more than 3 months is possibe unless an Advisory Board reports before the expiration of the period that there is, in its opinion, sufficient cause for the detention. The Advisory Board is to consist of persons, who are, or have been or qualified to be appointed judges of a High Court. The Parliament is, however, given the right to prescribe the circumstances under which and the class or classes of cases in which person may be detained for a period longer than three months, without obtaining the opinion of an Advisory Board and the maximum period for which no person may, in any class, or classes of cases be detained. When the Constitution came into force, no person could, therefore, be kept in preventive custody beyond 24 hours in the absence of either Parliamentary or State Legislation expressly providing for prevention detention. In fact, many in detention on that date (26th January 1950) were released by the Courts. The government however, introduced a Bill in Parliament in 1950, providing for preventive detention. India was face to face with serious political social and economic problems arising out of the Second World War, the partition of the country, the advent of independence, and the general economic and political unrest. The Preventive Detention Act was, therefore, passed incorporating all the safeguards required by Article 22 (iv) of the Indian Constitution. The Act provided that if either the Central or State Government was satisfied that a person was about to endanger the defence of India, the relation of India with foreign powers, the security of India, maintenance of public order or the maintenauce of supplies or services essential to the community, he may be detained under the Act. The Indian Supreme Court, following the decision in *Liversidge* v. *Anderson*, to which we have already referred, held that the satisfaction of the detaining authority is subjective and that the reasonableness of the satisfaction cannot be enquired into. This Act was extended in1952, in 1957, and again in 1960. Each time, the extension was opposed in the Parliament, but ultimately, the Government succeeded in getting it through. It must be said that in India, the Act has never been used to silence political opposition. Gopalan's case and the case of Kumara Mangalam—the two leading Communists, bears full

testimony to what we have stated. In both cases, as soon as the detenues were first released by the orders of the Supreme Court, they were re-arrested and in both cases, the Supreme Court did not hesitate in ordering their release again. Thus, the Courts in India, administered the Preventive Detention Act without fear or favour, affection or ill-will. This reflects on the glory of the Indian Judiciary. In short, the Constitutional position of preventive detention in India, is that (*a*) the detainee must be taken before the Magistrate within 24 hours of his arrest;[1] (*b*) the sufficiency of the particulars furnished to the detainee can be examined by the Courts[2]; (*c*) vague grounds will render the detention invalid[3]; (*d*) Article 22 of the Constitution must be scrupulously complied with;[4] (*e*) the subjective satisfaction of the detaining authority cannot be reviewed;[5] (*f*) The courts must examine whether detention is in violation of Fundamental rights.[6]

Thus, the Courts in India have the right to see that the limits of the authority of detention conferred on the Executive have not been over-stepped. The Parliament has the power to review from time to time the working of the Preventive Detention Act, which can be dropped by it whenever it considers proper.[7]

We have already considered the position of preventive detention in the U.S.S.R., Protective custody, or Administrative Detention as distinguished from the serving of a penalty under the Court sentence have varied in different periods of the Soviet regime. In the chapter on Fundamental Rights, we have also indicated the limits of the Soviet Judicial process as far as the liberty of the individual is concerned. In all the Eastern European countries, the Courts of Criminal Procedure follow the Soviet pattern. After the death of Stalin, the broad powers of administrative authorities to order detention, deportation and placement in forced labour camps were either completely abolished or greatly restricted. The only exception to this is the Bulgarian Law of 10th January, 1959.[8]

JUDICIAL ORGANISATION

After the consideration of the functions of the judiciary, it is necessary to consider the Judicial Organisation, because it is in this context that those functions can be efficiently discharged. In the discussion of judicial organisation, we shall consider the

1 *Gunapati Keshavran* v. *Nafisul*, 1954 S. C. 636.
2 *Shibban Lal* v. *The State of U.P.* 1954 S. C. 179.
3 *Ibid.*
4 *Dharam Singh* v. *The State of Punjab.*
5 *Gopalan* v. *The State of Madras*, 1950 S. C. R. 88.
6 *Lawrence D. Souza* v. *State of Bombay.* 1946 S. C. 531.
7 During emergency (as now) the normal safeguards to the detenu are not allowed. Distinguished Jurists have declared D.I.R. bad, unconstitutional and illegal.
8 For details, refer to *Journal of the International Commission of Jurists*. pp. 69-86.

principles of organisation, the heirarchy of courts, the mode of appointment of Judges, conditions of judicial independence, and allied matters. The Judicial organ, everywhere differs essentially from both the Executive and legislative organs. Whereas subject to some qualifications the supreme executive power is, today, universally entrusted to a single individual President of Prime Minister or to a Collegial organ while the Legislative power is exercised by a more or less numerous Assembly, usually consisting of two chambers, the judicial power is exercised by a series of magistrates or collegially constituted Tribunals, usually heirarchically organised, one above another, with a Supreme Court of Review at the apex. In Anglo-Saxon countries, the Courts, except those of Appeal, usually consist of a Single Judge, while in the Continental countries, the principle of Plurality of Judges exists for all the Courts except those of the justices of the peace. In India,

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nental countries are that the authority of a judgment bears a certain relation to the number of Judges who render it; and that Plurality of Judges affords a safeguard against arbitrariness and enables the Courts in Criminal cases to resist more effectively the influence of public Prosecutor. But this system necessitates a great multiplicity of judges and consequently a heavy budget or inadequately paid Judges. Another difference between the Anglo-American and the Continental System is that whereas the British and American Practice

holding Courts in different tov

in the country, the Courts in

i.e., they generally sit always in a particular town, and litigants must take their cases there to have them decided. In India, by and large, the Continental practice prevails. In States having the federal system of government, there are usually two separate and distinct series of judicial bodies, one to exercise the national or general jurisdiction of the whole Union, the other, the local jursidiction in each component State. Then, there is the problem of classification of the Courts. On the basis of the division of law into Civil and Criminal, Courts of Law too are organised as Civil Courts and Criminal Courts. All rules for settling dispute between private persons, belong to the civil branch. In Civil cases a single individual, the plaintiff, tries to get redress for an injury, which he alleges to have been done to him by another individual, the defendant; while in Criminal cases, an accusation is brought on behalf of the community on the ground that the accused person has done something contrary to the law and as the law was made for the benefit of the public, he has acted against the public interest. Thus, for example, if a man breaks a contract which he has made with me for the sale of a particular thing, he has committed a civil wrong against me; but if a man has stolen another man's watch or has murdered somebody, he has commit-

ted a wrong against the whole society, because these wrongs are wrongs not for mere personal compensation; on the contrary they are against the public life, because they are against law and order. Such cases will go to the Criminal Courts as the civil cases go to the Civil Courts.[1]

Now, these Courts are organised from the point of view of judicial administration in an hierarchical fashion, *i.e.*, in an ascending scale from the lower to the higher. The underlying principle of this ladder-like arrangement is that appeals lie from lower Courts to higher and the latter have a right to modify, alter or even reject the findings of the lower Courts. The appeals, that is to say, may either be allowed or dismissed. In every state, there is always a Supreme Court beyond which there is no appeal and whose judgment is final. Thus, in India, on the civil side, we have the Munsif's Courts, the Courts of the Civil Judges, the Courts of District Judges, the High Courts and the Supreme Court; and on the Criminal side we have the IIIrd Class, IInd Class and 1st Class Magistrates, from whose Courts the appeals lie in the High Courts and once again at the apex is the Supreme Court. In Criminal cases in most of the civilised states of the world the Jury System is used extensively for the determination of facts. In some states the Jury system is adopted even in civil cases while in other states Civil cases are left to Judges alone on the ground that the Judges are competent to deal with the complicated legal questions. It must be understood that the Civil Law is more technical more complicated, and, therefore, more difficult than the Criminal Law. In the U.S.S.R., and other communist states there exist People's Courts where justice is cheap and speedy and the rules of procedure are extremely simple.

In addition to these Civil and Criminal Courts, there are many Special Courts, created for particular purposes. They include Military Courts, Commercial and Industrial Courts, Courts of Claims, Labour Arbitration Courts, Courts of Impeachment etc. In Continental States, Administrative Courts form separate branch of the Judicial Departments, and to this we shall shortly turn. We have already alluded to the Judicial hierarchy in Federal States. It now remains for us to examine the question of the mode of appointment of the Judges.

MODE OF APPOINTMENT

In modern states, various methods have been employed in the selection of the Judges. Election by the Legislature was general in the early State Governments in the United States, owing to the fear of Executive and to the distrust of popular election. This method is also used in electing Federal Judges in Switzerland. But this method is generally not favoured, because it tends to destroy the independence of the Judiciary; secondly it results in

[1] Conrad bill.

political intrigue, and thirdly it leads to apportionment of Judges according, to local interests. A second method of selection of the Judges is popular election—a method which was favoured in the first half of the 19th Century as a result of the extreme theory of Popular Sovereignty that came in with the French Revolution. This method was tried and is still followed in many States of the American Federal Union. It is used in Switzerland for the selection of Judges in the lowest Courts and also prevails in the People's Democracies particularly in Russia. But the chief defect of this method is that it tends to secure weak and incompetent Judges, since the mass of voters are not sufficiently discriminating to select the best men, and since, those best qualified are usually not willing to engage in the methods necessary to success in a political campaign. Moreover, a Judge whose tenure depends upon re-election, is likely to be influenced unduly by public opinion and to give decisions that will be popular rather than legally sound. When Judges must also be politicians, the connection of the bench with the political machine or sometimes even with the underworld may result, with little likelihood of courageous and impartial justice.[1]

[illegible] by the Executive Head in States having the Presidential form of Government and by the Minister of Justice or Home Minister in States having the Cabinet form. In some states on the continent of Europe, the lower Judges are chosen by competitive examinations, and appointment to the higher posts is made by the executive on the basis of seniority or proved ability. This system usually results in a learned and independent body of Judges characterized by a high sense of professional honour but often too narrowly legal in their outlook.

A method which has been suggested, is the method of appointment by the executive from a list of nominations made by the Judges of the Court in which a vacancy occurs or by a body of higher Judges who are themselves independent and likely to be familiar with the qualifications of the men they recommend.[2] Appointment by the executive is favoured on the ground that the executive is more competent to select able men than the Legislature or the voters and that Judges so chosen are more likely to

1 Gettel : *Political Science*, p. 353.

2 Compare Laski : *A Grammar of Politics*, p. 548. He suggests that Ministers of Justice or Presidents, should make the appointment of Judges on the recommendation of a Standing Committee of Judges, which would represent all sides of their work. This is because "they after all know the bar as few others can know it. They are not likely to be moved by political prestige. They are in the best possible position to assess the probable fitness of the man likely to prove successful on the bench. They would represent the best guarantee we could have that appointments were made only with the needs of the office in view."

be independent of political or sectional considerations or of popular influence. In England and Canada, the Judges are appointed by the highest national authority which ensures that selection is free in a large measure from local, political, financial, religious and social influences. In both countries tenure is for life. The Judge is thus freed from the worries and dangers inherent in short tenure and society receives the benefit of experience and training and consequent maturity on the part of the judicial personnel. The important principle is that Judges must be appointed on the basis of ability and character which can be objectively judged. On the other hand, if the executive is free to appoint Judges as it chooses, personal favouritism or political considerations may determine the selection. The test of a method is : Does it ensure independence, integrity, impartiality, detachment and fearlessness in the Judge? If it does, it is good; if it does not, it is bad. These are the qualities the absence or presence of which in a *Judiciary will either make it a joke or a reality.* In this regard, at any rate, the Constitution of India makes an advance upon the *practice which prevails elsewhere. It is provided in the Indian* Constitution that in the mater of appointment of the Chief Justice of India, the President shall consult such Judges of the Supreme Court and of the High Courts as he may deem necessary. But in the case of appointment of other Judges of the Supreme Court, consultation with the Chief Justice of India, in addition, to the above, is obligatory. This provision, thus, modifies the mode of appointment of Judges by the executive, as it obtains, for example, in England, by providing that the Executive should consult members of the Judiciary itself, who are well qualified to give their opinion in the matter. The word "consultation", however, indicates, that the President is not bound to follow the recommendations of these persons. The last word will thus rest with the Prime Minister but he will have the advantage of having the views of those who are competent to speak in the matter. With regard to other Judges, they are largely promoted from the position of Munsifs who are appointed on the results of competitive examinations held by Public Service Commissions of different States. Since 1955, some states have also started the experiment of appointing District Judges directly from the bar—a system which in our view is unsatisfactory. It may and does lead to favouritism. In France, Germany and other continental countries—indeed in all countries which follow the Romanesque pattern —the Judiciary and Prosecution constitute a profession separate and apart from the legal profession. The Judges and the prosecutors are trained specially for their peculiar tasks. Each progresses form the lower to the higher ranks largely on the basis of merit. For example, in France the law provides that about one-fourth of the magistrates may be named by the Minister of Justice and the remaining three-fourths on the basis of competitive examinations. Advancement from the lower to the higher grades is determined by the joint action of a Grading Commission and the

the Minister of Justice. The Commission includes 4 associate justices of the High Court. This Commission classifies all magistrates according to their acumen and aptitude displayed in the performance of their duties, and the character of the services rendered. From the list thus assembled the Minister of Justice makes periodic advancements and assignments. These methods are certainly conducive to a fearless, independent and skilful judiciary which is a positive and masterly force in the administration of law. In Australia, the selection and appointment of High Court Judges rests with the Government of the day. Commonmonwealth and State Parliaments have contributed from amongst their members a majority of the Judges of the High Court which means that frequently they come from politics. In recent years, however, parliamentary life appears to have attracted fewer constitutional lawyers of eminence so that there has been an increase of judges without parliamentary and administrative experience.

We may now summarize the conditions of Judicial independence—the appointment by the executive in good behaviour, high salary and provision for retirement of Judges. These are also the conditions which are indispensable for sound administration of justice. To these conditions may be added some principles of justice, the rules of procedure to be followed in the Courts, and the quality of bench and bar. The principle of justice must include open trials, the right of parties to be represented by counsel, the burden of the proof to rest on the accuser, guilt to be established according to the law of evidence, the aid of Jury, legal aid to the poor, the honesty and helpfulness of the bar and

considerations to toady or to cringe before the political lawyers and Advocate Generals who practise before him.

THE JUDICIARY IN RELATION TO LEGISLATURE AND EXECUTIVE

The relation of the Judiciary with the Executive and Legislature may be considered from the point of view of the control

1 Compare Willoughby : *Government of Madras State*, p. 434. He says that the means of securing an independent Judiciary lie "in the provision that Judges shall be selected without regard to their political affiliations that, once selected, they shall hold office for a big term, for life, or during good behaviour, that they shall not be subject to dismissal by the executive, may be removed only for mis conduct as established by formal process of impeachment or address on the part of both Houses of the Legislature, and that their compensation, shall not be withheld or diminished during their term of office." Also refer to C.B. Whittier in American Political Science Review. Sep. 1926 and R.Pound: "*The Rule Making Power of the Courts.*" *Ibid.* December 1926.

which each exercises over the other—*i.e.*, first, from the point of view of the Judicial powers of the executive and its control over the Judiciary; second, of the administrative powers of the Judiciary and its control over the Executive; third, of the Legislative control over the Judiciary; and fourth, of the Judicial control over Legislation. Let us consider each of them in turn.

As for the executive control over the Judiciary, it is in most respects a historic survival of the original unlimited powers of the executive. The executive, today, exercises a certain control over the Judiciary, because in the last resort, Judicial decisions are effective only if supported and implemented by the Executive. Secondly, the Executive is frequently given large powers of appointment of Judicial offices. Of course, the permanent tenure that follows appointment may prevent continued control; but the complexion of the Judiciary and the nature of their decisions will be effected by the type of men selected by the Executive. Thirdly, in some countries the Executive may assign Judges to their stations and may punish Judges who are not sufficiently subservient by placing them in the less desirable places. Fourthly, the Executive exercises some Judicial powers—the survivals of the original judicial powers of the State. They are concerned mainly with the maintenance of discipline in the Army, Navy and Civil Service, and in the application and enforcement of administrative law. Modern States, however, create Constitutional and Statutory safeguards against the arbitrary use of these powers by the Executive. The right of Courts to uphold their dignity by punishing offenders for contempt of Court is a historical survival of the time when a Court was a mere division of administration and disregard of its commands was an offence against the majesty of the king. The pardoning power of the modern Executive is a still more direct survival of their original Judicial function.

But, if the Executive controls the Judiciary, the Judiciary also controls the Executive and this, we have already discussed in previous pages. About the relat
the Executive, various suggestions
thinkers, particularly by Laski. In
that no member of the Government
to a judicial position, because such
the chance that he can bring a really
legal questions in which the interests
Conversely, a man, who has attained judicial rank ought to be ineligible for political office so that their ambition to capture a political office may not mar the path of their duty. Moreover, the Executive and the Judiciary must, so far as possible, abstain from mutual criticism of each other's work.

The Judiciary is related to the legislature also. In regard to the Legislative control over the Judiciary, it is necessary to emphasize first that the Judicial departments of modern states are created by Legislative Statutes and may be modified or abo-

lished by Legislative enactment. Secondly, in most states, as we have already seen, certain judicial powers have been retained by the Upper House of the Legislature. In the third place, the legislatures in quite a large number of states also determine the salaries and allowances of the Judges. Again, in some cases, the legislatures also elect the Judges and in most cases the Legislature by presenting a joint address to the Chief Executive, may also remove the Judges from the office. The legislatures in some states can impeach the Judges. They can always criticize judgments given by the Courts. In states having written constitutions, judicial decisions may, if they run counter to the policies of the state, necessitate constitutional amendments and their discussion in the legislature are often an occasion of heated debates on the merits of the Court's judgments. This has often happened in India as we have stated earlier. Finally, the Legislature enacts the law which in countries like Britain, the Courts must always apply. But, if the legislatures control the Executive, there is also such a thing as the Judicial control over Legislation which we have already discussed earlier. The Judges, we repeat, in the process of interpreting the laws also come to make the laws and in the case of the states having written constitutions, there is the all important doctrine—the doctrine of Judicial Review. While the duty of the Judges is to declare the law as they find it and not to make new law, in construing a Federal Constitution the Courts cannot help but make law. Often they rewrite the constitution, giving it here or there a new tuck, twist or slant. They, sometimes, dramatically reverse themselves or repudiate the views of their predecessors on the bench, thereby throwing the formerly satisfied interests into consternation and bringing new hope to the once dejected and critical. The Courts not only legislate new slants or new detail into the Constitution but in declaring the Zamindari Abolition Legislation or Motor Transport Nationalization measures invalid the Judges virtually give legislative force to measures substantially different from those to which the will of the Parliament thought to give existence. Frequently, the courts thus legislate by narrow margins of five to four, slender majorities in which the Judges do not always arrive at the same result by similar reasoning. Judges, of course, deny that they legislate. They may insist that a statute is never declared illegal or invalid;

the Executive and the Legislature. The principle constitutes the basis of Rule of Law.

RULE OF LAW *vs.* ADMINISTRATIVE LAW

We are told by Dicey that the supreme characteristic of the

English Legal system is what he calls the Rule of Law. According to him the Rule of Law implies a number of propositions. It implies, in the first place, the principle of equality in the eye of law, *i.e.*, that every body, irrespective of caste, and creed, wealth and position, is equal in the eye of law and has to obey it. Law, that is to say, does not make any distinction between the rich and the poor. This is called the impartiality of law. The second proposition is that none shall be detained or wrongfully arrested unless his guilt has been established in a duly constituted Court of Law and in accordance with a duly constituted procedure. This is the principle of Habeas Corpus, which literally means 'Have body.' This Principle is based on the essential sanctity of human personality and the freedom of person which that sanctity involves. It implies that the individual is free to do anything, to say anything, and to write anything so long as his action, speech or writing does not constitute a breach of the law and so long as that breach of law is not established in a duly constituted Court of law. This doctrine secures the fundamental freedom of the individual. The third proposition of Dicey is that, with the English people the rules of the Constitution far from being the source of the rights of the individual are themselves the results of those rights as they have been upheld in Courts of Law. It means, that is to say, that for his fundamental rights, an individual does not so much look to the Constitutional rules as to the Courts of Law. The Courts of Law, therefore, become the guarantors of the rights of the individual.[1] It is easy to see that in addition to these the Rule of Law also implies, that people should not take the law into their own hands. The Rule of Law., therefore, excludes self-help. Appeal should be made to the Courts or failing the Courts, to a Democratic Government to change the Law. Appeal therefore, should not b[illegible] the end is the negation of [illegible] all rights. Again, the Rule [illegible] sed only after adequate and perfect discussion and that a distinction should be made between law and regulation. Whereas a regulation, ho[illegible] ernment department and [illegible] official, a law is passed by [illegible]

The burden of the Rule of Law, then, is the Liberty of the individual. And the most ancient freedom being the freedom of property, the burden of the Rule of Law is the protection of property. What, aft[illegible] man can employ lega[illegible] sel at all. And then [illegible] is emphasized in the [illegible] as law means equity, [illegible] ards set by property-owning classes. In so far as law is custom,

1 Dicey : '*Law of the Constitution*'. Lecture 5th.

2 *The Case for Conservatism* (Penguin Books) by Quintin Hogg. pp. 76-82.

it is the custom of age-long exploitation, justified by the doctrine of prescription and sanctity of the status quo. In so far as Law is the statutory law, it seeks to protect the interest of the law-making bodies which are dominated by upper middle classes. Equality in the eye of law is thus the legal counterpart of the *Laissez faire*. The same is true of the Habeas Corpus. It does secure liberty of the individual but only so long as the individual does not break the law which is an instrument of property. And the doctrine "that law should not be taken in hands" is a doctrine which turns into treason any attempt to overthrow the existing regime. It was, then, in this background that Dicey expressed his enthusiasm for the Rule of Law and his contempt for administrative Law.[1]

But in the continent, particularly France, parallel to the ordinary Courts of Law, there were Administrative Courts, charged with deciding controversies mainly involving claims against the State, and they apply a body of law separate and distinct from that of the Civil Law. The idea of the separation of the administrative jurisdiction from the ordinary Civil jurisdiction originated in France at the time of the Revolution and was a consequence of the general repugnance to the control which the Judicial Courts had exercised over the administrative authorities during the old regime. The feeling was that if the Judges were allowed to decide controversies arising between the State and its administrative authorities, on the one hand, and private individuals on the other, it would result in Judicial interference with the operation of the government and impair the efficiency of the administration. It was according [illegible] and administrative functions sh[illegible] tinct; that the role of the Judicial [illegible] decision of cases arising under the civil and criminal law. At first the decision of administrative controversies was left to the administration itself, but in course of time a series of special administrative tribunals or Councils were created to exercise this function.[2]

1 Compare Laski : *Parliamentary Government In England*. p. 355. "The truth is that Prof. Dicey's conception of the Rule of Law and his profound hostility to droit administratiff were both based on the postulates of a historic period which have now passed away His rule of law was the expression of an atomic individualism in which State and citizen were regarded as anti-thesis an objective and impartial Court holding the balance between them in terms of the eternal principle of the Common Law. But, in fact, those eternal principles, were no more their devices adopted to protect the owner of property from arbitrary interference by the State power; and their characters so far from being permanent, shifted as the evolution, most notably of the law of torts makes evident, in terms of the social pressure to which they were subjected."

2 F. J. Goodnow : *Comparative Administrative Law*, Vol. I pp. 7-9, 14-16. Discussing the nature of Administrative Law, Goodnow says: "Adopting the system of legal classification now generally admitted to be the most desirable, *viz*, according to relations governed, we find that administrative law is that part of the law which governs the relations of the executive and administrative autho-

Dicey contended that whereas in England, everybody is subject to the same law and same set of law Courts, in the continent the public servants are given a position of privileges.

ORIGINS OF DELEGATED LEGISLATION

But even in Dicey's days delegated legislation had begun to receive recognition. While most of the law-making was done by the Parliament and these laws were full of detail, with the advent of the Reform Bill of 1832 and the reforms in local govern-

rities of the government. It is, therefore, a part of the public law but it is only a part. All such rules of law as concern the function of administration, and only such rules of law, belong to administrative law Further, since the function of administration depends for its discharge upon the existence of administrative authorities, whose totality is called the administration, administrative law is concerned not alone with the relations of the administrative authorities but also with their organisation. Administrative law at the same time fixes the offices which shall form part of the administration and determines the relations into which the holders of these offices shall enter In so far as it fixes the organisation of the administrative authorities, administrative law is the necessary supplement to Constitutional law. While Constitutional law gives the general plan of governmental organisation administrative law carries out this plan in its minutest details. But administrative law not only supplements Constitutional law, in so far as it regulates the administrative organisation of the government; it also complements Constitutional law in so far as it determines the rules of the law relative to the activity of the administrative authorities. For, while Constitutional law treats the relations of the government with the individual from the standpoint of the rights of the individual, administrative law treats them from the standpoint of the powers of the government. Constitutional law, it has been said, lays stress upon rights; administrative law emphasizes duties. But while administrative law emphasizes the powers of the government and the duties of the citizen, it is nevertheless to the administrative law that the individual must have recourse when his rights are violated. For just so far as administrative law delimits the sphere of action of the administration it indicates what are the rights of the individual which the administration must respect; and in order to prevent the administration from violating them, offers to the individual remedies for the violation of these rights Administrative law is, therefore, that part of the public law which fixes the organisation and determines the competence of the administrative authorities, and indicates to the individual remedies for the violation of his rights...The endeavour must also be made to distinguish administrative law from the other branches of public law. The distinction between administrative and Constituional law has already been indicated. While Constitutional law defines the general plan of State organisation and action, administrative law carries out this plan in its minutest details, supplements, and complements it..... The distinction between the two is thus one more of degree than of kind.. ..The distinction between administrative and international law is quite clear. While administrative law lays down the rules which shall guide the officers of the administration in their action as agent of the government, internationl law consists of that body of usage which it is supposed that a State will follow in its relations with other States."

ment came a sharp increase in the volume of administrative law and delegated legislation. The working of laws began to be entrusted to officials, ministers and boards of Commissioners. The First World War caused a further rapid rise in the tide of delegated legislation. Large powers were conferred on the Executive by the Defence of the Realm Act of 1914-15. The Emergency Powers (Defence) Act of the Second World War conferred larger powers inasmuch as it empowered the Crown to make regulations by Order-in-Council for securing the public safety, the defence of the realm, the maintenance of public order and the efficient prosecution of any war in which His Majesty may be engaged, and for maintaining supplies and services essential to the life of the Community. Thus it has happened that every nation today is governed by all manner of Councils and boards and officers, central and local, high and low, exercising the powers which have been committed to them by modern statutes. The Defence of India Rules promulgated following the Proclamation of Emergency in India in October, 1962 have given immense [illegible]

[illegible] ittee on Minister's [illegible]

be unable to pass the kind and [illegible] modern public opinion requires."[1] [illegible] legislation is clearly an essential ele[illegible] today. That is why there is diminishing opposition to delegated legislation in principle, whatever differences there may be as to its extent and tendencies in practice. More and more men of practical or administrative experience recognise both its necessity and its value.

THE CASE AGAINST ADMINISTRATIVE LAW

Thus, all over the world there has been a tremendous growth of Delegated Legislation which means that the Legislature is delegating Legislative initiative to the administration and that Ministers have been increasingly entrusted with quasi-judicial and even fully judicial powers, which have partially or even fully excluded the operation of the Rule of Law. And this tendency has been characterized as "New Despotism" of "bureaucracy triumphant", we are told that this is a threat to individual liberty; that the administrative tribunals which are now springing, constitute a vital menace to the structure of Democracy, that these tribunals operate secretly and their decisions are rarely made public; they fail to give reasons for decisions; that they fail to allow hearing

1 Page 23.

trative officers have no real basis of independence.[1]

At times the Act which seeks to delegate power to the administration is skeletal and the scrutiny given to it by the legislature is inadequate. The Act may be loosely drafted and the publicity given it may be insufficient. The Delegated powers may be arbitrarily used. In Federal states, moreover, the Act may be *ultra-vires* the written Constitution. Most countries try to provide safeguards against such dangers through scrutiny by Legislative Committees, notifications of administrative regulations in the Gazette, fixing of dates upon which the regulations take effect, advance notice by the Department concerned of intention to make a regulation and certificate by the Solicitor-General to the effect that each regulation issued was within the powers conferred by the Act. There are other important safeguards also. The Enabling Act specifies the bodies to which powers are delegated and also specifies the powers that are delegated. If vague powers are given as in 1939, the exercise of these powers is limited. Before the delegated legislation is made, the interests affected are consulted and the statute sometimes provides for an advisory body to act in this capacity. There may also be an Explanatory Memorandum in the Enabling Bill indicating what Instruments (orders) are to be made under the Bill when it becomes law, and normally there are explanatory notes at the end of each Statutory Instrument indicating in non-technical language the general purport and objects of the Instrument. Again, each Instrument must be legislative and not executive in character. Publication of the delegated legislation is done as soon as possible after it is made. The Courts in the U.K. have held that if the regulations were not published at the time when any offence contravening them occurred, there are no grounds for a prosecution. There is also a uniform procedure by which Statutory Instruments are numbered, printed, published and cited. The Courts can declare Instruments *ultra-vires* if they are made for reasons other than those laid down by statute. Then there exist legislative safeguards. The Enabling Act may be repealed, or

1 Compare W.A. Robson : *Justice and Administrative Law*, pp. 303-304. Admiring the legal system based on the Rule of Law, Robson says,"The strength of the legal system is to no small extent in the fact that the Judicature is composed of men of unusually high character, of exceptional integrity, and of legal ability

the exercise of the delegated power may be revoked. The delegated legislation must be laid before Parliament and approved. The legislature may refuse approval. Parliamentary debates are a safeguard of some value, although many members may not be able to see or even be aware of an order. In all legislatures today there are Committees to consider delegated legislation and these committees are very powerful. They can ask the Department concerned to explain a regulation either orally or by written evidence. But with all these safeguards, the critics of Delegated Legislation point out that it constitutes a serious encroachment on individual freedom that the various administrative boards and commissions are, really speaking, within their ambit and terms of reference, laws unto themselves, and that the pressure of work already placed upon most Ministers and upon Parliament itself during Session, renders impossible any great shift of the actual burden of the work of the Boards back to Ministers or Parliament.

But, what is the other side? Much of this criticism comes from the Lawyers, many of whom prefer the stately rituals of the Courts to the simple procedure of administrative hearings, which a client can understand and even participate in.[1] For all we know, though their methods may be different from those of a Court of Law, they are no less scrupulous in the protection of private rights. Very largely, these administrative tribunals are concerned with technical matters, the decision of which requires a special knowledge rarely available either to Magistrates or Judges. Their work is swift and cheap.[2] The ordinary Courts' canons

1 Refer to President Roosevelt's Veto Message to Congress published in the "*New Times*" of Dec. 19, 1940. Vetoing the Walter-Loga Bill in which the President said, *inter-alia*" "Today, a common sense resort to usual and practical

2 Laski : *Parliamentary Government in England.* pp. 353-354. "Any one who compares its results with the unhappy consequences of allowing the ordinary Courts to have jurisdiction over workmen's compensation or the powers of district auditor will, I suggest be inclined strongly to the view that in the positive state, the ordinary Courts of law are rarely suitable for work of this kind." At another place (p. 353) Laski says : ".....the fact that power of a judicial kind is conferred upon the executive ought not to create the alarms and excursions upon which so much attention has been concentrated in the post-war years. There is no reason in experience, to suppose that a Court of Law is better or more fairly able to decide a dispute between School Managers and the Local Education Authority than is the Board of Education, on the contrary, granted that the latter body is fully seized of the facts, the presumption is all the other way. There is no reason either to suppose that a Court of Law is better able than the Minister of Health to pass upon the validity and wisdom of a closing order made against the owner of an insanitary house by a local authority; on the contrary, once more, granted the character of the issues involved, the presumption is again the other way."

of statutory interpretation are wholly defective for the purposes of the modern State, and they lack the knowledge necessary for the construction of proper administrative standards. While the administrative courts were originally established to protect the officials of administration from interference at the hands of the Judicial authorities, the administrative courts have become the protector of the private individual against arbitrary and illegal acts of the agents of government, and the means by which the State allows suits to be brought against it for acts that injure its citizens. Thus under the system of administrative Courts the citizen who is injured by the agents of the state may sue the State in the administrative Courts, with simple procedure and at small cost, and obtain pecuniary remedy. The truth is that it is the big business who constitute the powerful block ready to sabotage administrative tribunals.[1]

It must be remembered that quasi-judicial functions of an important character have often to be entrusted to determine a state of administrative organisation controlling vast number of civil servants. As we stated earlier, a mass of Legislative delegations has also grown up. Clearly the problems or the functions to deal with which Administrative Tribunals have been set up, require a different type of mind and approach from that possessed by a Judge of Municipal Court. These Administrative Tribunals express, in the words of Justice Holmes, "an institution of experience, which outruns analysis and sums up many impressions which may lie beneath conscience without losing their worth." We repeat, that to look upon their growth as constituting a new despotism, is manifestly wrong It ought to be remembered that there is a basic difference between ordinary Courts and Administrative Tribunals. While ordinary Court cannot take into consideration certain imponderables, it is the duty of these Administrative Tribunals to take them into account in arriving at a decision. The qualities of Judges in the two sets of Courts differ materially. It is, of course, essential that the Higher Courts of the land must possess the right to issue directions or orders in the nature of writs, for these would enable the Courts to ensure that these Administrative Tribunals do not travel in a land not assigned to them or that they do not violate the principles of what Lord Haldane called ,'natural justice". It is essential to realize that the adminis-

1 President Roosevelt's Veto Message, *Op.Cit.* He said: "There are powerful [illegible]

and a diversified mass of individuals, each of whose separate interest may be small, on the other side, the only means of obtaining equality before the law has been to place the controversy in an administrative tribunal. Great interests, therefore, which desire to escape regulation rightly see that if they can strike at the heart of modern reform by sterilizing the administrative tribunals, which administer them, they have effectively destroyed the reform itself."

trative process is our generation's answer to the inadequacy of the judicial and legislative processes and that without some such discretion, modern government would be procedurally bankrupt. That is why a review machinery is provided within the administrative side of the government under taxation, customs, repatriation, patents and trade marks legislation and quasi-judicial functions have been vested elsewhere in executive officers. This has been done to avoid expense and the delays in the methods of the Courts of law. By their freedom from *stare decisis* they are more easily able to do justice in each particular case. Their decisions, moreover, are based upon the fullest possible specialized and technical knowledge. Just as pressure groups have become an essential element in the democratic process today, similarly, there is absolutely no escape from delegated legislation and the administrative tribunals. Both delegated legislation and administrative tribunals are instruments inseparable from liberal democracy in the 20th Century; they are entirely characteristic of social democracy in our highly industrial society.' They are, of course, still challenged by those interests and professions which are hostile to the evolution of liberal social democracy. But that does not matter. Both are firmly established within the framework of the Legislature on the one hand, and the ordinary Law Courts on the other. They are hostile to neither the Legislature nor to the Courts, in fact, they supplement them and enhance their capacity to cope with the social and economic problems born of industrialism, total wars and welfare state.

It cannot be over-emphasised that although man cannot be made virtuous by laws, the function of law and justice is to facilitate his transition to a nobler state of existence. Each country maintains the system of law and justice in its own way, although one can be powerfully influenced by the impact of the other. A student of theory of Government must naturally have a general idea of the judicial systems in some of the leading countries of the world. To these, we now turn.

THE BRITISH JUDICIAL SYSTEM

The maintenance of public order in the United Kingdom is the responsibility of the Judiciary and the Police, for, both ensure the obedience of the citizen to the Law. Just as there is no written Constitution in the United Kingdom, there is no written Code of Law either. The question, whether a particular Rule is recognised as part of law, is determined by consideration of the authorities—Statutes, Statements of Legal writers, and decided cases. If these are not available, the Judge uses what is called, the Process of Analogy, *i.e.*, he bases his decision in a case on its similarity to a previous case in which judgment has already been given. The sources of law in Britain are Common Law and Statutory Law. The former are based on Customs, the latter, include

the Acts of Parliament and Delegated or Subordinate Legislation. The Scottish Common Law is different from that prevailing in England and Wales and in Noithern Ireland. During the Middle Ages, equity was also introduced into English Law and in 1873, the Courts of Equity were merged in the Courts of Common Law. The present position is that all Courts apply equity as well as Common Law, but in cases of conflict, the former prevails. The bulk of the Statutory Legislation applies uniformly throughout the United Kingdom. As in other countries, the main branches of Law in England are Civil Law and Criminal Law. The principles of Criminal Justice are derived from the doctrine of the Rule of Law, which means that the detaining authority must show cause for the detention; that the accused person must be presumed innocent until his guilt has been proved; that the burden of proof lies on the accuser; that the Prosecution will have no advantage over the Defence; that the accused cannot be compelled to answer the questions of the Police before trial; that he can be released on bail; that he has the right to employ a professional lawyer for defence and that in case he cannot afford it, he may be granted legal aid; that he has a right to hear and to cross-examine witnesses for the Prosecution and that he cannot be tried for the same offence twice. The use of a Jury is the necessary element of the process of Criminal Justice. The Jury functions independently and its verdict must be unanimous. The Law of evidence is the same in Criminal and Civil trials.

An important characteristic of the British Judicial organisation is that no single form of organisation pervails throughout the U.K. and that the position differs in England, Wales, Scotland and Northern Ireland. Britain has no separate system of Administrative Courts as one finds in the continent. In recent years, quasi-judicial Tribunals have, of course, sprung up and there has also come into existence a whole body of Administrative Law. Before the Crown Proceedings Act of 1947 was passed, it was necessary for a British subject to sue offending officials rather than the Government, so that actual redress was not always possible. Under this Act, "immunity of the Crown in Tort was abolished and the earlier cumbersome procedure was significantly modified." In Britain, the Lord Chancellor is the Supreme Administrative Director of the Judiciary. He presides over the House of Lords, and along with 9 Lords of Appeal-in-Ordinary, decides appeals on questions of Law from the highest Tribunals of both Civil and Criminal jurisdiction. Below the House of Lords, t
is divided into a

over by the Lord Chancellor; the Queen's Bench has 25 Judges and a Lord Chief Justice; the Admiralty Division has seven

Judges and a President. This High Court of Justice has both appellate and trial functions in both Civil and Criminal cases. Below the Supreme Court, there are a large number of County Courts, each having one County Court Judge, and a series of Assize Courts, presided over by the Travelling Judges, sent out from the High Court in London. The county Courts are so arranged that no part of the county is more than a reasonable distance from one of them. For Criminal cases, there is a Court of Criminal Appeal, in which there are three Judges of Queen's Bench. From the County Courts, appeals can be taken to the Court of Appeal; from the Courts of Assize and from the Quarter Sessions and from the Petty Sessions, appeals can be taken to the Court of Criminal Appeal. From the Court of Appeal and from Court of Criminal Appeal, a further appeal is possible to the House of Lords with the leave of the House of Lords or of the Court of Appeal. These appeals are heard usually by five of the nine Lords of Appeal-in-Ordinary, who are "paid professional Judges."

There are also Ecclesiastical Courts which have jurisdiction only in matters of doctrine and ritual. The jurisdiction of Military Courts is exclusively over persons subject to Military Law. The powers of Court Martial are limited to those conferred on them by … ceeded, … are thre… which d… in which a Government Department is interested, for example, Pensions Appeals Tribunals; (*b*) those which deal with disputes, where specialized knowledge or experience on the part of the Tribunals is required, for example, the Lands and Rent Tribunals and (*c*) those which enforce professional discipline, for example, the General Medical Council. From these Tribunals, appeals go to the Ministry concerned or on a point of Law, to the higher Courts of the country.

As we have already pointed out, the British Judiciary is independent of the Executive as well as of the Legislature. Since the Judges are paid decently and are appointed on recognised merit, the quality of the British justice is very high. The basic principle of the Judiciary is that justice should not only be done, but should appear to have been done. Judges hold their office during good behaviour and can be removed by the Sovereign on an address presented by both the Houses of Parliament. Since 1701 (The Act of Settlement), only one Judge has thus been removed. The Constitutional responsibility of the administration … the Lord Chancellor is a member and it frames the rules of the Supreme Court.

The legal profession of England, as we have written earlier, is divided into two groups—Barristers and Solicitors. Although there can be no hard and fast dividing line between them, it may be generally said that the Solicitors undertake legal business for clients, while the Barristers appear in the Courts and conduct the case. The Barristers are organised into what are called Inns of Courts, of which there are 4—The Inner Temple, The Middle Temple, Lincoln's Inn and Gray's Inn. No person can become a Barrister unless he has passed the legal examinations conducted by the Council of Legal Education, and has become a member of one of the four Inns. In 1961, there were approximately 25,000 Solicitors, and 25,000 Barristers in England and Wales. An effective screening process assures high quality of the Bar in the United Kingdom. Free legal assistance is given to persons of meagre means and resources. The main objectives of the British Penal System are Deterrence and Reformation, the principle underlying the system is that its effectiveness depends less on the punitive treatment of the detected offender than in its total impact—fear of detection, public trial and conviction and the possibility of punishment, whether by imprisonment or otherwise. The treatment of offenders is, therefore, based as far as possible, upon the measures for the social rehabilitation of the Offender rather than upon the measures intended simply to punish the offender for his crime.

Finally, it may be pointed out that in England, the Doctrine of Judicial Review does not exist. The Parliament is legally supreme and sovereign and, therefore, no courts can declare the Acts of the Parliament *ultra-vires*. But the Higher Courts can always review the Orders-in-Council and orders and rules of administrative authorities and can declare them void. While the Courts cannot review the Acts of the Parliament, they can always inject new meaning into them in the process of interpreting them. Sometimes the language of the Law is not clear and the Courts can give their own meaning to it; sometimes a new situation, to which a particular Act may not apply, arises, and the Courts can always give their own answer to it; sometimes the existing Law does not cover a particular case and here the Courts can select the principles of the Common Law on the subject. It is thus clear that the Judges do make laws even in Britain.

THE FRENCH JUDICIAL SYSTEM

The basic principles of the French Judicial System are different from those in England. In the first place, there exist in France, Administrative Courts and Administrative Law. *Secondly*, the use of the Jury is much more limited than in the case of England or the United States. The French Jury does not find the accused guilty or not guilty. In the French practice, there is no such thing as a general verdcit. Instead, the Judges submit to the Jury a list of questions, to which they must answer 'yes' or 'no.'

Again, in France, a unanimous verdict of the Jury is not required, and a simple majority is sufficient. The Judge can also ask the Jury whether or not extenuating circumstances exist in favour of the accused, and if the answer is in the affirmative, the Court is legally bound to reduce the penalty. After the Jury has found the accused guilty, it will consider and vote with the Court on the nature of the penalty to be imposed. *Thirdly,* in the French Law, there is no presumption of innocence, and the entire criminal record of the accused is presented at his trial. This puts the accused on the defensive right from the start of his trial. As one writer has said: "While he is not compelled to answer questions put to him, his silence may prove to be worse for him than a confession." *Fourthly, the Appellate Courts in France have* much wider powers than their counter-parts in Britain or in the U.S.A. In France the Court of Appeal reviews both the law and the facts and it invariably hears the defendant in person and may also receive oral testimony from witnesses. Another important feature of the French Judicial System is the Commercial Courts, which handle commercial cases and are presided over by Judges *selected* by the leading commercial interests of the District. The practitioners before these Courts, are called 'Agrees who are familiar with the customs in the branches of commerce. Cases connected with the transfer of property are handled in France by a class of officials called as 'Notaries', who have no connection with the [illegible]

[illegible] of the Legal Profession." A private lawyer in France can never [illegible]

[illegible] Grading Commission. The Courts in France are known for their honesty, certainty of work, speed and finality.

The French legal profession is divided, as in England, between two branches—Avocat and Avoue, as we stated earlier. The course of Training for admission to Practice is long and arduous and this ensures the high quality of the French Bar. Judicial decisions in France do not have the force of Law, as in England, India or the United States. The laws are embodied in four codes, formulated during the regime of Napoleon—the Civil Code (1804), the Code of Procedure (1807), the Code of Commerce (1807) and the Penal Code (1810). In addition to these, the French Parliament keeps on adding Laws. In France, Judicial precedents carry only such weight as their merit deserves. Prior decisions of the High Court are not binding either on the lower Courts or on the High Court itself. However, in practice, great weight is conceded to former decisions, because of the logical

nature and the very justice contained therein. In other words, the only weight given to former decisions is that based on reason and common sense. While in England and the United States, Criminal Justice is based on "accusational system", the French system of criminal Justice is based on 'Inquisitional System'. The witnesses in the French Courts are treated with great courtesy and the Judge is the Master in the Court room.

The Constitution of the Fifth Republic established three principal judicial organs, in addition to certain other traditional courts. In the first place, there is the High Council of Judiciary to assist the President, who is "the guarantor of the independence of the judicial authority." He presides over it but in his absence it is presided over by the Minister of Justice who is ex-officio Vice-President of this body. It consists of nine members appointed by the President in conformity with the conditions determ [illegible]
of the [illegible]
Presid [illegible]
determined by an organic law on proposals of the Minister of Justice relative to the nominations [illegible]
consulted on questions of pardon, [illegible]
to be determined by an organic law. [illegible] Council for judges in which capacity it is presided over by the First President of the Court of Cassation.

Secondly, there is a High Court of Justice comprising of an equal number of members elected from among their membership by the National Assembly and by the Senate after each general or partial election to these Assemblies. This is not in conformity with the theory of separation of powers. It elects its Presidents from among its members. An organic law is to determine its composition, its rules, as well as the procedure applied before it.

Finally, there is the Constitutional Council which represents one of the most original elements of the new constitution and which possesses some of the characteristics of the Supreme Court of the United States of America. It is a kind of "Council of wise men" of the new regime. In principle, it is composed of 9 members, 3 of whom are nominated by the President of the Republic, 3 by the President of the National Assembly and 3 by the President of the Senate. The mandate of these members lasts 9 years and is not renewable, provided that 1-3rd of the membership is renewed every 3 years. In addition to these 9 members former Presidents of the Republic are members ex-officio for the life of the Constitutional Council. Until this body was set up according to the constitution, its powers were to be exercised by a committee composed of the Vice-President of the Council of State as Chairman, the First President of the Court of Cassation, and the First President of the Audit Office. Its President is appointed by the President of the Republic and in addition to other privileges, its president has a casting vote in case of a tie. T[illegible]

membership of this body is incompatible with that of ministry or membership of the Parliament. There may be other limitations and incompatibilities to be prescribed by an organic law.

The functions of the constitutional Council are three-fold, electoral, judicial and legislative. It is to uphold the fairness of elections. It has to ensure the regularity of the election of the President of the Republic, announce its results, and examine complaints. It gives a ruling, in the case of disagreement, on the regularity of the election of deputies and senators, and it also ensures the regularity of the referendum procedure and announces its res[illegible] tional [illegible] gated. [illegible] as found in the U.S.A. or in India,. In these countries a law, after it has been promulgated, can be challenged and if found unconstitutional, can be declared null and void. In France, the constitutionality of a law is examined before it is actually promulgated, and this supremely important power belongs to the Constitutional Council. All Organic Laws, before their promulgation, and all regulations of the Parliamentary Assemblies before they are applied must necessarily be submitted to the Constitutional Council which is empowered to give its ruling on their constitutionality. Again, laws may be referred to it before their promulgation by the President of the Republic, the Premier or the President of either house of Parliament. In all these cases, the Council has to give its ruling within a month. In cases of emergency and at the request of the Government, however, this time-limit may be cut down to 8 days only. In all cases where a reference of a law has been made to the Constitutional Council, the time-limit for their promulgation is suspended. The review of the council, it must be stated, is not a courtesy review and its opinion is not merely advisory. It has the last word on laws referred to it.

A law or a provision thereof which the Council declares unconstitutional cannot be promulgated or implemented and the decision of the Council "are not subject to appeal to any jurisdiction whatsoever. They must be recognised by the public powers and by all administrative and judicial authorities.

Finally, it is provided that an organic law is to determine the rules of organization and functioning of the Constitutional Council, the procedure to be followed before it, and in particular of the periods of time allowed for laying disputes before it. In the light of the powers granted to this body, it can be said that the Constitutional Council is intended to function as a brain trust of the Fifth Republic and as a custodian of its constitution. The fate of a ministry will largely depend on the opinions of this quasi-judicial organ. The relations between the Premier and the President may be materially affected by its pronouncements A *modus vivendi* will have to be found to regulate the relations

between this body and the Parliament. But these are matters on which no opinion can be expressed at the moment.

THE AMERICAN JUDICIAL SYSTEM

The basic principle of American Constitution being Separation of Powers and the constitution of the country being Federal and written, the Judiciary occupies a very prominent place in the American Political system. One major principle of the American Judicial system, therefore, is the doctrine of Judicial Review, which implies, that in case the Congress or a State Legislature travels beyond the province assigned to it by the Constitution, the Courts would declare such a step *ultra-vires* and null and void. In this sense, the judicial department in the United States upholds the ethics of federalism. The judicial pronouncements in the United States have gone a long way in giving a definite shape to the American Political system. *Secondly*, in America, there is a dual Judicial system, the State and Federal, each completely independent of the other. Aside from the fact that in certain cases Appeals may be taken from the Appeal Courts of the States to the Supreme Court of the United States, there is no provision in interaction or even inter-communication. Each is a law unto itself and each follows its own peculiar course, with no concern with what the other may do. *Thirdly*, it is not the Judge but the lawyer that dominates in the American Courts of Law, as we have already pointed out. The lawyer writes out the instructions to the Jury and the Judge cannot sum up the relevant facts and point out the law applicable in each case. *Fourthly*, by and large, the American Judiciary is elected. In 5 states, nominations of the Judges are made by political party conventions. In 14 States, nominations are made at non-partisan Primary Elections and the winner's names appear on the general election ballot without party identification. In as many as 18 states, nominations are made at Political Party's Primaries and the nominees go before the voters at the General Election in the regular party ballot. In 4 States, selection is made solely by the Legislature. In 9 states, they are appointed by the Governor, subject to confirmation by the State Legislature. The elective method, by common consent, is the worst. It not only makes the Judge a shuttle-cock in the game of politics, it also drives out quality from the Bench. It makes the tenure of the judge short and encourages the growth of the political lawyer. It prevents the judge from acquiring specialized knowledge. It tends to undermine the prestige and respect for the Courts. It encourages the Judge to use his office as a stepping-stone to a more lucrative practice. We have already referred to the humiliations to which a witness is normally subjected in the American Courts. In fact, a person standing in the witness box there functions in a partisan spirit. The judges are entirely drawn from the legal profession and expected to go back to their profession at the close of

their terms. This practice seriously undermines his capacity to discipline the lawyer in a Court. The legal qualifications of a person entering the Judicial career, are not very high. There is no practical method to weed out the unworthy. The administration of Criminal justice is, on the whole, weak and halting and the main responsibility for this weakness is that of the Criminal Lawyer. The Bar, on the whole, is commercialized and there is a great deal of over-crowding. In recent years, large areas of litigation have been transferred from the Courts to Administrative Boards and Commissions and Arbitration Tribunals. The working of these Administrative Courts does not indicate that justice is done speedily or cheaply. The procedure of conciliation and arbitration has not been looked on with favour either by the lawyers or by the judges—lawyers, because it takes business away from them, and judges, because they have been lawyers and will some day be lawyers again.

When all this is said, it must be remembered that the task of a judge as of a lawyer in the United States of America, is, in the nature of things, extremely difficult. No lawyer and no judge can be well conversant with the laws, which are daily enacted by the American Congress and by as many as 50 Legislatures of the States. In fact, law-making is the most prolific industry in the [illegible] ost of the Universities of [illegible] f law is to be necessarily [illegible] and not of actual laws. In this jungle of laws, a lay man is also lost and he has to take shelter of the lawyers in all situations.

In the Federal sphere, on top there is the Supreme Court, provision for which was made in the American constitution itself. It is the highest Court in the United States and its decisions are final. The American Congress has the power to pass various laws about its organisation and work. The Congress can decide from time to time how many Judges the Court will have and what their salaries shall be. The President's choice of persons to become Supreme Court Judges must be approved by the Senate. Within certain limits the Congress may decide what cases shall be tried in the Supreme Court. The Congress cannot, however, change the powers given to the Supreme Court by the Constitution itself. The Supreme Court consists of a Chief Justice and 8 Associate Judges appointed for life, subject only to good behaviour. They hold office as long as they do their work satisfactorily. If one of them commits a serious offence, while in office, he may

who have participated in the proceedings. One member of the majority, writes and presents the formal opinion or decision of the Court. A differing Judge may give a dissenting opinion. The opinions of the Supreme Court are closely followed by the legal profession and Justices of all Courts. The ideas and principles expressed in them are employed in legal arguments in other Courts and exert great influence on the Courts even of foreign countries.

The Court may, at times, reverse itself, or modify an earlier opinion as a result of changes in personnel or on the basis of new reasoning with respect to similar issues. The American Constitution has given the Court a separate, independent status on a par with the President and the Congress The Federal Judicial power is extended by the Constitution to all cases in law and equity arising under it. Its jurisdiction extends to the laws on treaties of the United States, to cases involving international law or affecting Foreign Ambassadors and other public Ministers and consuls to admiralty or maritime matters and to controversies to which United States is a party, controversies between two or more states or between the citizens of different states or between the citizens of a state and foreign state or their citizens or subjects. This great sweep of Judicial authority exercised solely experimentally in the beginning, has since the days of Chief Justice Marshall, been employed as a positive force in the Constitutional cases to mark the limits of power as possessed by the Executive and the Legislative branches of the Government. It was Marshall, who declared that "it is a constitution, we are expounding" and that "the Legislature makes.. and the Judiciary construes the laws." These guide-posts, still mark the course followed by the Federal Judiciary, including the Supreme Court itself. The Supreme Court, neither approves nor condemns any legislative policy. Its only job is to ascertain and declare whether the legislation is in conformity with the Constitution or not and with it, its duty ends. Even if they find a certain legislation unwise and prejudicial to both public and private interests, if it be fairly within the delegated power, the Court's obligation is to sustain it. When the Court declares an Act unconstitutional in whole or in part, the only recourse of the Congress is to frame new legislation within the limits of the Constitution as construed by the Supreme Court. All this does not mean that the Federal Courts function within a straight jacket or that the Constitution is interpreted with the strictness of a statute or private contract. To quote Chief Justice Marshall, "we admit as all must admit, that the powers of government are limited, and that its limits are not to be transcended. But we think, the sound construction of the constitution must allow the Legislature that discretion, with respect to the means by which the powers it confers, are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate. Let it be within the scope of the Consti-

tution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional"

The Courts' tendency, in general, has been to interpret the constitution liberally and many of its members have been counted among the liberal thinkers of the United States. It is a settled principle in the Supreme Court procedure that it will decide matters in actual controversy, which may be essential to the decision in any case before it. Justice Brandeis enumerated 7 safeguards and restrictions, which the Supreme Court has imposed upon itself in the consideration of constitutional questions. These were (*a*) the Court will not pass on the constitutionality of legislation in a friendly, non-adversely proceeding; (*b*) it will not anticipate a question of constitutional law in advance of the necessity of deciding it; (*c*) it will not formulate a rule of Constitutional law broader than is required by the precise facts to which it is to be applied; (*d*) it will not pass upon a constitutional question, although properly presented by the record, if there is also present some other ground upon which the case may be decided; (*e*) it will not pass upon the validity of a statute on complaint of one who fails to show that he is injured by its operation; (*f*) it will not pass upon the constitutionality of a Statute at the instance of one who has availed himself of its benefits ; (*g*) a Statute will, as far as possible, be construed to avoid a question of constitutionality.

It is, thus, clear that the Court not only does not reach out for opportunities to construe the constitution, but attempts assiduously to avoid them. It is only when the issue cannot be thus avoided that the Court performs its highest judicial function and acts as the guardian of the constitution in order to provide shelter in law to those who claim its protection. On June 2, 1952, the Supreme Court for the first time in its history, held that the President of United States had exceeded his constitutional powers. It did so in setting aside an order issued by President Truman, directing the Secretary of Commerce, a member of his Cabinet, to take possession of and operate most of the country's Steel Mills. The purpose of the Order was to prevent an interruption of steel production during a labour dispute, occurring while the Korean conflict was in progress. On behalf of the President, it was claimed that he had acted correctly under the aggregate of his powers as conferred by the Constitution and with the authority conferred by these powers. In considering this claim, the basic [illegible]

to authorise such seizure. As Justice Black said: "the founders of this nation entrusted the law-making powers to the Congress alone in good and bad times. It would do no good to recall the historic events, the fear of power and the hopes of freedom, that lay behind their choice. Such a review would but confirm our

holding that the seizure order cannot stand. Justice Felix Frankfurter, concurring with this view stated: "A Constitutional Democracy like ours, is perhaps the most difficult of men's social arrangements to manage successfully. Our scheme of society is more dependent than any other form of government on knowledge and wisdom and self-discipline for the achievement of its aims. For, our Democracy implies the reign of reason on the most extensive scale." Justice Douglas and Justice Jackson also held the same view. It may be pointed out that all these Judges were members of the same political party as the President and in fact, had been appointed by a Democratic President. Thus, in order to preserve the principle of separate and balanced powers on which the American Constitution rests, the Supreme Court of America may overrule and admonish the President no less than the Congress. In doing so, of course, it sweeps aside all extraneous considerations and acts in the confidence that its decisions will be accepted by the other branches of the government and by the country at large. Even, during the Civil War, an order issued by President Lincoln, suspending the privilege of Habeas Corpus as a war measure, had been denounced by Chief Justice Taney as an invasion of the Legislative Prerogative. In British constitutional practice, Parliament alone could suspend the writ and the same principle is incorporated by implication in the American consti- [illegible] Court could act, however, the [illegible] ncoln's order by giving him specific [illegible] action in the war emergency and the Court was never required to rule on the point originally raised.

There have been stray examples in which State Governments have refused to comply or even resist compliance with a Supreme Court ruling, or attempt otherwise to circumvent the applicability of a constitutional provision to its internal affairs. Such a course can only invite the use of force as represented by the greater powers of the National government to compel compliance. When such situations have arisen, however, the passage of time and the good sense of all concerned have led usually to complete or substantial acceptance of the law, as construed. In the words of Lord Bryce, the Supreme Court is "the living voice of the constitution."

The Constitution leaves to the Congress much authority over the other Federal Courts. It can decide when to establish more Federal Courts and Judgeships and what cases each kind of Federal Court shall hear. It can even change or abolish any Federal Court except the Supreme Court. The Congress has actually established two types of Federal Courts whose function is to settle the maximum number of suits and thus lighten the load of the [illegible] e whole country is divided into ten [illegible] Circuit there is one Circuit Court of [illegible] wo types of the Courts—and a number of a District Courts. The latter total about 100. There is also a United States Court of Appeals in the District of Columbia,

which is regarded as a Judicial District. Under law, most Federal suits or prosecutions must be tried first in the District Courts. Under certain conditions, if parties to a trial are dissatisfied with the lower Court's decision, they may appeal to a Higher Federal Court. In some cases, the appeal may be carried directly to the Supreme Court, and in others, the case must first be appealed in the Circuit Court of Appeals. There are also cases in which the Circuit Court of Appeal's ruling is final.

Sometimes, the Congress has established a number of Special Courts. For example, in 18
In 1926, the United States C
arbitrates disputes over the
being brought into the count
and Patent Appe
for Patent Cases,
refused a Patent o
Finally, there are other Special Courts to handle cases where subject matter of the dispute and the body of the law governing it, is of a highly technical nature.

THE INDIAN JUDICIAL SYSTEM

One of the most important contributions of the British Rule in India, has been the system of Judiciary they built up in this country. Before the Goverment of India Act of 1935 was passed, there was no one single Court for the whole country. There existed High Courts at Calcutta, Bombay and Madras, created by the Act of 1861. In Lahore, Allahabad, Patna and Rangoon, High Courts were established later on. All of them were Chartered High Courts. In other Provinces, the Chief Courts or Judicial Commissioner Courts had been established. Chief Court in Oudh and the Judicial Commissioner Court were to be found till very lately in the Central Provinces, North West Frontier Province and Sindh. Each of the Chartered High Courts consisted of a Chief Justice, and a number of other Judges, who must have been Barristers, members of the Indian Civil Service or Indians engaged in the Judicial service or in the practice of law. As a rule 1/3rd of the Judges of each Court were drawn from the Indian Civil Service. They were appointed by the Crown upon the advice of the Secretary of State for India, but unlike the Judges of England, who were appointed for life, they held office during His Majesty's pleasure. Jurisdiction of the High Courts was regulated by their Charters and they were given power by Acts of Parliament (British) to hear appeals from, and to exercise a certain administrative supervision over, the inferior Judges and Magistrates in the Di[illegible] They had power to
direct the transfer of
rules governing the
The decisions of the
could be taken to th

in England. In the districts, the Highest Courts used to be that of the District and the Sessions Judge, who used to try both Civil and Criminal cases. Below him, there were Sub-Judges and Munsifs for Civil work and Magistrates for Criminal work. From their Courts, appeals could go to the Courts of a District Judge and from there to the High Court or the Chief Court or the Judicial Commissioner, as the case may be In serious criminal cases, trial by Jury was provided in important cities., where a competent Jury could be found. In those Sessions cases, in which Jury trial was not allowed, Indian Assessors were chosen by the Judge to assist him in reaching a decision, although their finding was not binding upon the Judge. Where the accused was a European British subject, a majority of the Jury was composed of British subjects, the theory being that the accused would feel more confidence, if he was tried by persons of his own race.

Under the Act of 1935, for the first time an All-India Court, called the "Federal Court of India" was set up. It consisted of one Chief Justice and such other number of Judges as His Majesty might deem necessary. When the new Constitution came into force, the number of Judges was 5. The Judges were to be appointed by His Majesty and they were to serve during his pleasure until they attained the age of 65 years. The Federal Court was given Original jursidiction, Appellate Jurisdiction and Advisory Jurisdiction . The rest of the Judicial structure of the country was not materially affected by the Act of 1935.

When the new Constitution came into force in 1950, the Indian Judicial system was one of the best in the world. Inspite of Imperialism, the Judges had established finest traditions of
legal scholarship. Comparatively
said to be very expensive. There
al. In Criminal cases, the right of
the accused to be tried by a Jury had been extended to many
as the Earl of Selborne stated in the British parliament: "their decisions were quite as good as those of English Judges in respect of their integrity, learning, knowledge and soundness." At the District level, unfortunately, the Judicial functions were combined with the executive duties, so that the District Magistrate and the other Magistrates were not only executive and Administrative Officers, but they also exercised Judicial powers. During British period, the law administered by the Courts in India was derived
ts of the Indian
atures. In addi-
ces made by the
rovinces. There
were also such Orders-in-Council made by the King-in-Council in England, as were applicable to India. Much of the law of

India had been codified, for example, the Penal Code, the Codes of Civil and Criminal Procedure, Succession Act, an Evidence Act, a Contract Act, a Negotiable Instruments Act, an Act relating to the transfer of property and laws relating to marriage, the Status of Minors, Trade Marks, Weight and Measures, the Insurance, Insolvency, Usury, Forests, Mines, Factories, Labour Emigration, Public Health and many other matters. In addition to these Statutory Laws, there existed the Hindu Law and the Mohammadan Law derived from the *Mansumriti* and the *Quran* respectively. In both cases, the law was personal and applied chiefly to questions of marriage, inheritance, succession and the like.

With the coming into force of the Indian Constitution, the Federal Court of India was substituted by the Supreme Court consisting of a Chief Justice and such other number of Judges as the Parliament, by Law, may determine. Originally, the Supreme Court consisted of one Chief Justice and 7 other Judges. In 1956, the Parliament passed the Supreme Court Number of Judges Act, which raised the total strength to 11. In 1960, the Supreme Court Number of Judges Amendment Act was passed, further raising the strength of the Supreme Court Judges to 14 including the Chief Justice. A person to be appointed a Judge of the Supreme Court must be a citizen of India, must have been for at least 5 years a Judge of the High Court or of two or more such Courts in succession, or an advocate of a High Court or of two or more such Courts in succession for 10 years or a distinguished Jurist. The constitution provides that a Judge of the Supreme Court will be appointed by the President in consultation with such of the Judges of the Supreme Court and of the High Court in the States, as the President may deem necessary for the purpose. In the case of appointment of a Judge other than the Chief Justice, the Chief-Justice of India must be consulted. In practice, the appointment of the Chief Justice of India as well as of the other Judges of the Supreme Court of India is recommended by the Home Ministry and after the matter has been examined by the Appointments Committee of the Indian Cabinet and the decision receives the blessings of the Prime Minister, it is formalised by the Indian [illegible]

[illegible]

of India. The Salary of the Chief Judge is Rs. 5,000/- per month and that of other Judges Rs. 4,000/- per month. The privileges and allowances of a Judge and his rights in respect of leave and absence or pension cannot be varied to his disadvantage *after his* [illegible] by writing to that [illegible] from his office [illegible] address from each [illegible] the total member- [illegible] than 2/3 rds of the members of that House present and voting, has been presented *to*

him for such removal on the ground of proved misbehaviour or incapacity. Under Article 127 of the Constitution, provision has been made for the appointment of *Ad hoc* Judges. This is a novel procedure. Under Article 128, the Constitution provides for attendance of retired Judges at the sittings of the Supreme Courts. The seat of the Supreme Court is in Delhi and it can also meet at such other places, as the Chief Justice of India may appoint from time to time with the approval of the Union President. The Supreme Court is declared a Court of Record and is given the powers to punish for contempt of itself.

The Supreme Court has wide rule-making powers in order to regulate its own procedure. Cases involving interpretation of the Constitution are decided by a Bench of not less than 5 Judges, other [illegible]

office, those duties can be performed by such other Judges of the Supreme Court, as the President may appoint for the purpose. The Supreme Court of India is the final Court of Appeal and the Jurisdiction of the Privy-Council of England was abolished by an Act of the Indian Parliament in 1950. The law, declared by the Court, is binding on all the Courts in India and the decrees and orders of the Court are enforceable throughout the country. Subject to any provision of Law made by the Parliament, the Supreme Court can make any order for securing attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself. All authorities, Civil and Judicial in the territory of India, act in aid of the Supreme Court. Appointments of officers and servants of the Supreme Court are made by the Chief Justice of India or such other Judge or Officer of the Court as he may direct. The President may, of course, direct that in certain cases, no person not already attached to the Court, shall be appointed to any office connected with it except after consultation with the Union Public Service Commission. The condition of service of officers and servants of the Supreme Court are prescribed by rules made by the Chief Justice, as they are approved by the President. The administrative expenses of the Supreme Court, including all salaries, allowances and pensions, payable to the officers and servants of the Court are charged upon the Consolidated Fund of India.

Following the pattern of the Federal Court of India, the Supreme Court has original jurisdiction, the Appellate Jurisdiction, and the Advisory Jurisdiction. Under Article 131, the Supreme Court has Original Jurisdiction in any dispute between the Government of India and one or more States, between the Government of any State or States on one side and one or more

States on the other; between two or more States. The dispute must involve any question whether of law or fact, on which the existence or extent of a legal right depends. The Original Jurisdiction, however, does not extend to a dispute arising out of any treaty, agreement, covenant, engagement, Sanad or other similar instruments, which, having been entered into or executed before the commencement of this Constitution and continues in operation after such commencement. Under Article 32, the Supreme Court can issue directions or orders in the nature of writs of Habeas Corpus, Mandamus, prohibition, quo-warranto, and Certiorari for the [illegible] his jurisdiction is, however, [illegible] also possess similar powers. [illegible] enforcement of fundamental rights conferred by Part III of the Constitution, otherwise Article 32 does not apply. It may be pointed out that the issue of a writ *is a matter of discretion of the Supreme Court. For example, the* Supreme Court, refuses a writ on the ground that the writ, if issued, would be ineffective. It must also be borne in mind that to get a writ issued by the Supreme Court under Article 32 of the Constitution it is not necessary for the petitioner to go to a High Court before coming to the Supreme Court. The petitioner can go direct to the Supreme Court. This was fully established in the case of Romesh Thapar. The only limitation is that the rights to be enforced under Article 32, must ordinarily be the rights of the petitioner himself, who complains of the infringement of such right and approaches the Court for relief. An exception to this rule is in the case of an application for a writ of Habeas Corpus. It may also be pointed out that while under Article 32, the powers of the Supreme Court are *limited*, and it can issue *writ only for* the enforcement of fundamental rights governed by Part III of the Constitution, under Article 226 of the Indian Constitution., the High Courts have much wider powers. They can issue writs not only for the enforcement of fundamental rights, but also for other [illegible], of course, cover, the [illegible] covered by Part III of [illegible] ide that the jurisdiction of the Supreme Court under Article 32 and of the High Courts under Article 226, is supervisory.

The Supreme Court has also Appellate Jurisdiction in Constitutional cases, Civil cases and Criminal cases. Under Article 132, appeals can lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a Civil, Criminal or other proceedings, if the High Court certifies that the case involves substantial questions of law as to the interpretation of the Constitution. Where the High Court has refused to give such a certificate, the Supreme Court may grant special leave to appeal. Where such a certificate is given or such leave is granted, a party in the case may appeal to the Supreme Court on the ground that any such question was wrongly decided or on any other ground with the leave of the Supreme Court. Under

Article 133, appeals can be filed in Civil cases to the Supreme Court from any judgment, decree or final order in Civil proceedings of a High Court, if the High Court certifies that the amount involved in the dispute is not less than Rs. 20,000/- or such other sum as may be specified by Parliament by law, or that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value or that the case is a fit one for an appeal to the Supreme Court. Where the judgment, decree or final order appealed from, affirms, the decision of the Court immediately below, the High Court must further satisfy that the appeal involves some substantial question of law. No appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

Articles 134 of the Indian Constitution provides for Appellate jurisdiction of the Supreme Court in regard to Criminal matters. It is provided that appeal shall lie to the Supreme Court from any judgment, final order or sentence in a Criminal proceeding of a High Court, if the High Court (*a*) has on appeal, reversed an order of acquittal of an accused person and sentenced him to death, or (*b*) has withdrawn for trials before itself a case from any Court subordinate to its authority and has in such trial, convicted the accused person and sentenced him to death, or (*c*) certifies that the case is fit one for appeal to the Supreme Court. This certi- [illegible] nd special [illegible] uld be the [illegible] *the State*). [illegible] ay by law, confer on the Supreme Court any further powers to entertain and hear appeals from any Court in India subject to such conditions and limitations as may be specified by such law. Article 136 empowers the Supreme Court to grant special leave to appeal from any judgment in any case passed by any Court or Tribunal in the territory of India, except such judgments or orders as might have been issued by any Court working under any law relating to the Armed Forces of India. The Supreme Court has the power to review any judgment pronounced or order made by it. It has also such powers with respect to any of the matters in the Union List as Parliament may, by law, confer.

The Advisory jurisdiction of the Supreme Court is provided [illegible] Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon. The President may also invite the opinion of the Supreme Court on any matter which causes a dispute between the Centre and a State. The opinion of the Supreme Court is of course, not binding on the President.

Since the Constitution came into force, the President has referred several questions to the Supreme Court for opinion—The Kerala Education Bill, the Indo-Pak Agreement on the Beru-Bari Union, and the Delhi State Laws Case.

The Supreme Court is the final interpreter of the Constitution of India. Within the limits laid down in the Constitution, it can declare whether a law is *ultra vires* or not. Important of these limits are (*a*) no law, laying down the procedure for arrest or detention of individuals, can be challenged by the Supreme Court if any particular provision in these laws is consistent with any provision of the Constitution itself, it can be declared void; (*b*) no law laying down any principle of compensation in the acquisition of property by the State can be challenged by the Supreme Court on the ground that the compensation is unjust, unreasonable or insufficient. Here, the authority of the Legislature is final (Article 31); (*c*) some Federal matters have been placed beyond the jurisdiction of the Supreme Court. No law relating to the deimitation of the constituencies or allotment of seats to those Constitutencies can be questioned before the Supreme Court or other Courts. Subject to these limits, the Supreme Court has the power of judicial review. In fact, the jurisdiction and powers of the Supreme Court of India are wider than those exercised by the highest Court of any country. It is the protector of fundamental rights; it is the guardian of the Constitution; it is the sentinal of Democracy; it is the embodiment of Rule of Law; it exercises supervision over the government; it strikes the balance between the needs of individuals and the needs of society; it is the protector of the interests of public servants; it is a great cohesive force. In *Venkataraman* v. *the State of Madras*, it struck an effective blow to communalism and held the allotment of vacancies in the Civil service community-wise, unconstitutional and void. It has functioned in India as a critic of the Legislature, the Civil services, the Police, the Subordinate Courts, the Advocate-General and of the Ministers.[1] Its pronouncements and judgments for sometimes, led to the amendments of the Constitution. Sometimes it has been criticized and even attacked, but it has survived all the onslaughts. At times, it has given unpopular verdicts but as we stated earlier, a judiciary worth the name must be independent of the tumultous crowd.[2] It has been extremely jealous of its powers and rights given to it by the Constitution. A study of the judgments of the Supreme Court of India would amply demonstrate that it has been inspired with a desire to secure justice and in so doing, it has made no attempt at substituting its own will for that of the Legislature. It has also tried to make the spirit of law pervade through the governmental process. Finally, it has tended

1 *Ram Narain Singh* v. *The State of Delhi and others. The State of Bombay* v. *Pandurang Vinaik Chaphalkar and others. The Union of India* v. *Madan Gopal Kabra. Rao Shiv Bahadur Singh and anothers* v. *the State of Vindhya Pradesh.*

2 Commander Nanavati's case.

tax the consumption of electricity consumed by the Government of India. Largely they depend upon the financial assistance of the Union. Emergency powers of the Union authorities are sweeping in character. The Parliament is entitled to alter the boundaries of a State, increase or decrease its area or even destroy it altogether. The Chief Justice argued that if Parliament was competent to destroy a State, how can it be said that it was incompetent to acquire by legislation the property owned by a State for governmental purposes. Thus, according to the Supreme Court, the distribution [illegible] does not support the theory [illegible] to render them immune from [illegible] Parliament, particularly in relation to acquisition of property of a State. The Supreme Court held that the Union Parliament could legislate so as to trench upon the rights of the States in the property vested in them even if the States were regarded sovereign qua the Union. And, therefore, the Impugned Act was valid and that the State of West Bengal was not such a sovereign authority as to disentitle the Union Parliament to exercise its leislative power under Entry 42. Mr. Justice Subba Rao, in his dissenting judgment said that the present was a typical case where the Court should stop the Centre from overstepping its boundary and trespassing into the State field. He held that the impugned Act in so far as it conferred a power on the Centre to acquire lands owned by the State, including coal mines and Coal-bearing lands was *ultra vires*.

APPRAISAL OF THE SUPREME COURT OF INDIA

Finally, there are a few points, which may be offered in a spirit of utmost humility, where the Supreme Court can be said to have been found wanting in meeting the aspirations of the people. In the first place, it has allowed itself the luxury of off the record comments, in which most Courts of such high status do not usually indulge. Secondly, the Supreme Court has thwarted occasionally the social and economic policies, which a State Government or the Central Government had very enthusiastically espoused. We have already referred to such cases. Thirdly, sometimes the Supreme Court has caused a feeling of frustration in the country by its conservative approach based on the concept of a bygone age. Let us for example, consider the role of the Supreme Court in the sphere of labour disputes. In 1947, the Industrial Dispute Act was passed in India, which created Industrial Tribunals and charged them with the duty of bringing about a settlement of disputes between capital and labo[illegible] T[illegible] Tribunals were not bound by any [illegible] the terms upon which such settlemen[illegible] the Act indicate whether the Tribunals were simple organs for the enforcement of the terms of contract between Master and servants, or their duties extended to establishing new contracts upon terms which might be fair and reasonable. The Tribunals were entirely

uncertain about their powers. The appeals which went from these Tribunals to the Supreme Court, were decided in the spirit of *Laissez-faire*. In the appeal preferred by the Western India Automobiles Association from the decision of the Bombay Industrial Tribunal, the Supreme Court was asked to answer how far an Industrial Tribunal could go in modifying contractual relations between master and servants. Could a Tribunl, that is to say, compel an unwilling employer to take back an employee who had been dismissed from service? Justice Mahajan delivering judgment *(March 13, 1949) in this case, stated that the object of the Industrial* Disputes Act was "to maintain industrial peace" and for this purpose, a Tribunal could redefine relationship between master and servants. In another case the same year, Justice Mahajan said that the Tribunal could create new rights and obligations between the parties, which it considers essential for keeping industrial peace. Thus, "while giving effect to the necessity of redefining [illegible] g industrialization, Justice [illegible] Adjudicator to the main- [illegible] *ion.'. During this period,* the Supreme Court laid stress on order and production and not on social justice, while the Industrial Tribunals tended to be radical in their approach. In the case of Muir Mills, the Industrial Tribunals conceded the demands of the workers for the grant of bonus on the ground that although the balance sheets of the Company did not reveal any surplus, the Company had distributed substantial dividends to the share-holders. The reasoning of the Tribunal [illegible] the chief exponent of Conservatism in the Supreme Court, delivering the judgment said: "The considerations of social justice imported by the Labour Appellate Tribunal in arriving at the decisions in favour of the workmen were not only irrelevant but untenable. Social justice is a very vague and indeterminate expression and no clear-cut definition can be laid down which will cover all situations. The concept of social justice does not emanate from the fanciful notions of any particular adjudicator but must be founded on a more solid foundation". This, to say the least, was hardly in conformity with the spirit of the Directive Principles of State policy.

The same conservative spirit is reflected in the judgment of the Supreme Court in the appeal by Barsi Light Railways from the decision of the Industrial Tribunal, granting retrenchment compensation to workmen, who had been discharged following closure of the concern. In the appeal by M/s Newspapers Ltd., expression was given to the same old approach,[1] a police power was infused

1 It was said in the course of the judgment that . the machinery of the Act has been devised with the object of maintaining industrial peace so as to prevent interference with public safety or public order or with the maintenance of supp-

into a Legislation which was clearly designed for a welfare state, and "the Act was made to look like an arm of the Defence of India Rules to meet the exigencies of economic warfare between labour and capital."

These judgments naturally created a stir and discontent, because, in them, the Supreme Court appeared largely in the role of the saviour of industrial peace and order. The Court's decisions had the effect of making punishment and discipline as exclusively managerial functions. The Court held that it was for the management to decide whether a workman was guilty of misconduct alleged against him and to determine the punishment to be meted out to him (See Justice
M/s Caltex India Ltd., a
Tribunals could not act as
of the management, but were merely concerned with ensuring that the rules and adequate form of procedure had been maintained.[1] This stand of the Supreme Court, in fact, raised the employer to the status of a judicial authority in its own cause and subordinated the employee to the whims and fancies of an employer. The

It stated: "The interference of the Supreme Court in labour matters is causing serious concern to the trade union movement. Despite the pleas made by certain eminent leaders like Nehru that the law should march with the times, the Supreme Court's judgements more and more assumed essentially a retrograde character. We have to campaign against the employers filing the appeals to the Supreme Court and for a change in the law so that the progressive content of industrial legislation may not be effected by incessant and costly litigation and appeals, in which the workers can never hope to beat the employers' purse'. Things reached a climax when the Supreme Court held that retrenchment relief under the Act was not available to workmen, who had been discharged by reason of the closure of an establishment. The Parliament immediately amended the Act, giving relief to this category of employees. Similarly when the Supreme Court set aside the recommendations of the Wage Board for Working Journalists, the Parliament passed a law, safeguarding their conditions of service. Gradually the Court realised the need of social justice and increasing attention began to be given to the Directive Principles of State Policy. This new spirit is reflected in the judgment of the Court in the appeal by the Crown Aluminium Works. In

lies and services essential to the life of the community or of employment... The object of the Act is the prevention of industrial strife, strikes and lockouts..."

1 Supreme Court Judgment in the appeal by M/s Indian Iron and Steel Co, Ltd.

this judgment expression is given to the "new guiding principles of social welfare and common good" in determining the wage structure.

Along with this spirit, the older trend, however, continued in some judgments. For example, in the appeal by Express Newspapers Private Limited, Justice Bhagwati quashed the law designed to fix the condition of service of Working Journalists through the apparatus of a Wage Board. Although the right of the workers to strike in support of their demands was recognised in the case of Punjab National Bank Limited against its employees, the similar right of slow down was condemned in *Bharat Sugar Mills* v. *Jain Singh*. The Supreme Court, in this case, described "go slow" as the most pernicious and dishonest practice. But as time passed on, the new trend to which we have referred, became more and more prominent in the Supreme Court judgments. In the appeal by the State of Bombay against the Hospital Mazdoor Sabha, the Court rejected the argument that Hospital was not an industry and that its employees were excluded from protection of the Industrial Disputes Act. The Supreme Court declared: "Industrial adjudication has necessarily to be aware of the current of socio-economic thought around; it must recognize that in the modern welfare state healthy industrial relations are a matter of paramount importance and its essential function is to assist the State by helping to find a solution of industrial disputes which constitute a distinct and persistent phenomenon of industrialized States. It cannot hark back to age-old notions about the relations between employer and employee or to the doctrine of *laissez faire* which then governed the regulation of the said relations.."[1]

1 This same attitude was re-echoed in the judgment in the appeal filed by Messrs Standard Vacuum Refining Co., on the question of wages and bonus in the following terms:

"It is well known that the problem of wage structure with which industrial adujdication is concerned in a modern democratic State involves in the ultimate analysis to some extent ethical and social considerations. The advent of the doctrine of a welfare state is based on notions of progressive social philosophy which have rendered the old doctrine of laissez faire obsolete..... As the social conscience of the general community becomes more alive and active, as the welfare policy of the State takes a more dynamic form, as the national economy progresses from stage to stage and as under the growing strength of the trade union movement collective bargaining enters the field, the wage structure ceases to be a purely arithematical problem. It is in this sense, and no doubt to a limited extent, that the social philosophy of the age supplies the background for the decision of industrial disputes as to wage structure."

By this judgment the Court also released bonus from its bondage with the living wage. The earlier bonus judgments of the Court had enunciated that the workmen could sustain a claim to bonus only when they established that the wages paid to them were below the living wage level. Bonus on this principle, became admissible to fill the gap between the actual wage and the living wage. From the enunciation of this principle it would appear to follow that once the

We may, thus, conclude that in recent years, the Supreme Court has tried to give expression to the spirit of social welfare and social justice in determining questions of wages, bonus or other amenities. Secondly, on questions pertaining to the disciplinary powers of the management, the Supreme Court has consistently declined to interfere with the decision of the management unless it was found that there was want of bonafides, a breach of natural justice or victimization. The dominant trend in the Court has been that the employer is the best judge of discipline in an establishment and that the Industrial Tribunal cannot sit in appeal in such matters. Thirdly, in other than economic and social matters, a trend in the Supreme Court of India has been its readiness to reverse its earlier decisions. This tendency has been quite marked

The Court has also tended to permit question of facts to be reopened before it and in one or two cases even an affidavit had been allowed to be filed[1]. In some cases, the Court accepted for review its earlier refusal to grant special leave to appeal.[2] At times one can also see a reluctance on the part of the Supreme Court to show the same courage it once did in declaring invalid executive action or legislative enactment.[3] And finally, some observers have pointed out that in some recent cases, the Supreme Court has tended to grant wider powers to the Executive than it seemed to demand.[4]

How does the Indian Supreme Court compare with its counterpart in the United
jurisdiction of the
India, although it
America. While, in India, appeals can lie in Civil, Criminal and Constitutional matters, in the United States of America, there are no appeals in Civil and Criminal matters. In India, there is only a single set of codes. There are no separate State offences, nor separate State Courts. There are no Federal Immunities or guarantees. In the United States there are separate State Courts, whose decisions the Supreme Court hesitates to over-rule. In Australia, the appeals from the State Supreme Courts lie not to the Federal High Court, but to the Privy Council. In India the Supreme Court is the master. It has the power to declare any law, whether of the Centre or of the State, invalid,

workmen were paid a living wage they would have no claim to bonus. But in the Miranda House college case (April 1, 1963) the Supreme Court (*Per* Gajendragadkar, J.) held that a University is not an industry and that its employees are, therefore, not entitled to the benefits of the Industrial Disputes Act (*see* Main Stram 8th June, 1963).

1 *Kathi Raning Rawat* v. *the State of Saurashtra.*

2 *Messrs. Associated Tube Wells Ltd.* v. *Rai Bahadur Gujarmal Modi.*

3 *Narendra* v. *the State of Punjab.*

4 *K. S. Srinivasan* v. *Union of India.*

if it is repugnant to a provision of the Constitution. The Indian Constitution not only provides for the Union Government, but also for the State Governments; here the states do not have their own separate constitutions. The entire Constitution of India is subject to review by the Supreme Court. In America it is different. Again, while in the United States, the Supreme Court has no Advisory jurisdiction, in India it has. Another great difference between the two Courts is that while the American Supreme Court can declare a law unconstitutional on the ground that it does not satisfy the requirements of the Due Process of Law, in India, there is no such clause. The Indian Supreme Court can declare only that law as *ultra-vires*, which is not within the Legislative competence of the State Legislature or of the Parliament. It is immaterial whether these laws are otherwise good or bad; the Legislatures are supreme in their spheres. The Indian Consitution guarantees trial "according to procedure established by law" and has, thus, relieved the Supreme Court of a tremendous amount of work, which its prototype in the United States has to do in interpreting the due process of law.

STATE JUDICIARY IN INDIA

Below the Supreme Court of India, there are High Courts, which stand at the head of the Judicial administration in the States. There is provision for a High Court in each State. Every High Court consists of a Chief Justice and such other number of Judges as fixed by the President according to the needs of the State concerned. Judges are appointed by the President of India in consultation with the Chief Justice of India, Governor of the State concerned, and, in the case of a Judge, other than the Chief Justice, the Chief Justice of the High Court. In actual practice, Judges of the High Court have been appointed on the initiative of the Chief Justice of a High Court. The Chief Justice makes his recommendation to the Chief Minister of the State, who, after consulting the Governor, forward the recommendation to the Home Minister of the Government of India. The Home Minister after consulting the Chief Justice of India, makes his own recommendation to the President, who formally makes the appointment. This procedure has been brought out publicly in the report of the Law Commission. The I aw Commission further revealed that if the Chief Minister disapproved of the recommendation of the Chief Justice, he sent up to the Home Minister his rival recommendation with or without the knowledge of the Chief Justice. This procedure naturally undermines the prestige of the Chief Justice of the High Court. In fact the Commission strongly condemned the decisive voice given to the politicians in making Judicial appointments and said that the Judges were reduced to the humiliating status of advisors. It went so far as to apprehend that the independence of the Judiciary would soon be a thing of the past if the High Courts were filled by judges,

who owed their appointment to politicians. Te Government of India, in the light of these criticisms made by the Law Commissions, announced on February 8, 1962 that hereafter the Chief Justice of a State High Court would send direct to the Home Minister of the Government of India, a copy of the recommendation to the Chief Minister of the State regarding the appointment of a Judge of the High Court.

The matter, however, is more serious when it comes to the question of the appointment of a Chief Justice in a State High Court. Whatever the provision in the Constitution, in practice the Chief Minister of the State concerned takes the initiative and forwards his recommendation to the Home Minister, who, after consulting the Chief Justice of India, advises the President. If the Governor is obliged to act on the advice of the Chief Minister, the Chief Justice will owe his appointment to the Chief Minister, who is a rank party politician. That, of course, is most deplorable.

The Judges of the High Court will now retire at the age of 62 years instead of 60 years.[1] They are given constitutional protection with regard to their conditions of service. The salary of the Chief Justice is Rs.4,000/- per month and of other Judges Rs. 3,500-, per month. The usual safeguards with regard to their privileges are provided to them. The Judges of the High Court can be transferred from one High Court to another. On September 25, 1962, the Union Home Minister announced that the transfer would take place more frequently onwards in the interest of national integration. The High Courts of the States have Original as well as Appellate Jurisdiction in Civil as well as in Criminal matters. Every High Court can issue to any person within its jurisdiction the necessary writs for any purpose including the enforcement of fundamental rights. Below the High Courts, the old Judicial structure, to which we have already referred, continues. After 1947, a large [illegible] and Tribunals have sprung up i[illegible] delegated legislation is coming u[illegible] in the High Courts cannot be basically different from the dominant tendencies working in the Supreme Court whose judgments are binding on all the Courts below. In the sphere of labour disputes, for instance, the High Courts have followed the same reasoning as the Supreme Court did. In the Sridaran Motor Services case, the Madras High Court held that the employers have fundamental right to terminate services of their employees and that social justice is a contentious concept. Similarly, the Patna High Court pleaded for denial of well known Trade Union rights to a section of employees. But of late, the High Courts like the Supreme Court are also following the more progressive line in tune with peoples' expectations. Mr. Justice Dwivedi of Allahabad High Court delivered a very significant judgment on the writ petition of M/s.

1 Proposed constitution Fifteenth Amendment Bill moved in the Lok Sabha on December 8, 1962.

Niranjan Lal Bhargava and Company, Allahabad (Jan. 1963.) The N. L. Bhargava Company had filed a writ petition against the award of the Industrial Tribunal U.P. granting bonus for the year 1957 to all workmen of Niranjan Lal Bhargava and Co., at the rate of 1/6 of the total wage paid to them in that year. Firstly, it was contended that the dispute between M/s. Niranjan Lal Bhargava & Company and their employees did not constitute an industrial dispute, because the firm did not carry on any industry as defined in the U.P. Industrial Dispute Act. His Lordship said that it was not denied that the firm made profits from the work of exhibiting cinema pictures. It was admitted that the work of cinema pictures was being regularly carried on by the firm with the co-operation of the employees. He then failed to understand how the firm did not carry on an industry as defined in Clause (*k*). To his mind the firm carried on a business or an undertaking. A fortiori, exhibition of cinema pictures by the firm should constitute an industry.

Secondly, it was contended that the dispute of the employees of the firm was an individual dispute and was accordingly not an industrial dispute. The High Court observed that the dispute of the employees of the firm in respect of the bonus for 1957 was espoused by the Allahabad Cinema Operators' Association. The case of the firm before the Tribunal was that no employee of the firm was a member of the Allahabad Cinema Operators' Association. The employees, on the other hand, alleged that they were members of that Association. In proof of their allegation they examined the Secretary of that Association and two other witnesses. Those witnesses had stated that the employees of the firm were members of the Association. The firm did not produce any evidence to countervail this evidence. Accordingly, the Tribunal found that the employees were members of the Allahabad Cinema Operators' Association, which could take up the dispute on their behalf. In view of this finding it must be held that the dispute of the workmen of the firm in respect of the bonus for 1957 became a collective dispute when it was espoused by the Association. As such the dispute was an industrial dispute within the meaning of that term in the Act.

It was argued that as the referring order could not be construed to refer to the business of exhibiting cinema pictures carried on in Niranjan Cinema, the Tribunal had exceeded its jurisdiction in [illegible] nt in deter- [illegible] efully gone [illegible] the award [illegible] the income from the Niranjan Cinema. Indeed, although the workmen had submitted to the Tribunal that the Niranjan Cinema Trust [illegible], the Tribunal did not [illegible] al had decided was that [illegible] rm were directed by the

firm to work in the Niranjan Cinema. The Tribunal had accor-
who worked in the
bonus for 1957. It
taken into considera-
tion the profits of the Niranjan Cinema. It was further argued that as the workmen did not make any contribution to profits, they were not entitled to any bonus.

His Lordship said that he confessed that he had been wholly

only by the co-operation of capital and labour and the profit was the dividend of their harmonious co-operation. Lastly, it was argued that the finding of the Tribunal that the petitioners made a profit of Rs. 30,000 to Rs. 40,000 was based on no evidence.

The Court said that this argument should fail for two reasons. Firstly, he was not inclined to find the petitioner to raise this argument which related to the merits of the case, because in his

In view of its conduct the petitioner should not be allowed to impugn the best judgment assessment of profits.

SUGGESTED IMPROVEMENTS

We may now make a few suggestions for the improvement of the Judicial system we have today. In the first place, as we stated earlier, the Judges must not be appointed to a Government post after retirement. Secondly, the age of retirement of the High Court Judges and of the Judges of the Supreme Court must be brought on the same level. There should not be any difference in the salaries of the High Court Judges and the salaries of th
to do the same ki
High Courts is
facing heaps of ar
and the quality of the Indian Bar being deplorably low, comprehensive steps must be taken to attract talent to it. Since the bulk of the Judges of the High Courts and the Supreme Court are drawn from the Bar, the poor quality of the Bar is fully reflected in the poor quality of the Bench.
Again, there is a tendency in this
some times in a most irresponsible
in high and responsible positions do not exercise the necessary amount of restraint. This is entirely unwarranted. On the

other hand, the Indian Judges are unnecessarily sensitive and they tend to resent all criticism, even when it is honest and is made with best intentions. The way the Indian Courts have applied the law of contempt of Court fully substantiates the opinion we have expressed. Another serious problem is that of drafting of the laws. After we got independence, the quality of drafting started deteriorating. This leads to unnecessary litigation, hair-spliting and confusion. The responsibility of the legal remembrancers in this regard is very serious. Then, again, there is the problem of combining the office of the Law Minister and the Attorney-General at the Centre. In December, 1962, the Union Government announced the decision to combine these two offices, on the ground that the practice of having a separate Attorney-General arose in British times for special reasons, which no longer exist. Under the Government of India Act 1935, the Central subjects were divided between the Reserved and Transferred categories. The provision for the Attorney-General was made to enable the Governor-General to secure independent legal advice on the subjects that were Reserved. In our view, the two offices must remain separate, because the independent advice of t' Attorney-General can be extremely valuable to the Government. The Attorney-General of India, in his address before the Chagla Enquiry Commission, in his evidence before the Law Commission, on the question of amending Article 226 of the Indian Constitution, and on the issue of the executive interference in the affairs of the Judiciary in the matter of Nanavati's temporary release gave his opinion, which was quite at variance with the view held by the government. The advice of the Attorney-General can always be ignored by the government, if it so likes. But the independent advice must, at least, be available and may be useful at times.

Finally, there is also the problem in India of the separation of Judiciary from the Executive at the District level. In July, 1962, the Government of India announced that 7 States—Andhra Pradesh, Gujrat, Kerala, Maharashtra, Madras, Mysore and West Bengal, have completely separated Judiciary from the Executive. The Assam Government has not done anything in this regard so far. In Bihar, the scheme is in force in 12 districts out of 17. In Madhya Pradesh, steps in this sphere are yet to be taken. In Orissa, the scheme has been implemented in 9 out of 13 districts. Separation has been effected in 10 out of 19 districts in the Punjab. The Rajasthan Government has yet to implement it. In Uttar Pradesh, separation exists in 47 districts. Now, the type of separation, which has been brought about, is merely a sham. The Deputy Collectors and the District Magistrates continue to exercise Judicial functions. The Judicial Officers and the Judicial Magistrates function under the supervision of the District Magistrates. They are not under the control of the High Court. The sort of justice which is meted out by these officers does not do any credit to the Judicial aspects of the theory of Separation of Powers.

THE JUDICIAL SYSTEM IN OTHER COUNTRIES : SWITZERLAND

In Switzerland the Chief Judicial Institution is the Federal Tribunal, which consists of 30 Judges elected for a term of three years by the Joint Session of the two Houses of the Assembly. In theory, any person qualified to be a member of the National Council may be elected a Judge; in practice, experienced Jurists or lawyers are selected and they can be re-elected for successive terms. The different linguistic and religious communities of Switzerland are duly represented in the Tribunal. The Judges, of course, cannot be members of the Assembly or the Federal Council. In trials of treason, the Tribunal can make use of a Jury. In the ordinary course, it is divided into several Benches to deal with the different types of cases coming before it. The Criminal Bench tries Ordinary offences against Federal Laws and the Cassation Bench hears appeals from persons who have been convicted by Cantonal Courts for offences against Cantonal Laws and who complain that their conviction is contrary to Federal Law. In Switzerland, there is a Single Court of Criminal and Civil Law throughout the country and the Cantonal Laws which are repugnant to the Swiss constitution are void. The Court has an Administrative Bench to deal with an offence committed by public officials and with disputes arising between the States and Religious bodies. The Federal Tribunal also decides Civil cases to which a Canton or the Federation itself is a party, or in which the sum of money involved is substantial. Then, there is an Extraordinary Court of Cassation, consisting of 7 members of the Federal Tribunal to hear appeals from all other Benches of the Federal Tribunal.

The Tribunal interprets both the law and the constitution. But, unlike the American Supreme Court, it has no power of Judicial Review. Its authority on Constitutional question is not final. All disputes regarding the relative powers of the Legislative and the Judiciary can be resolved in a joint sitting of both the Houses of the Federal Assembly. This is understandable, because in Switzerland, in the making of laws, the people are directly associated through Referendum and Initiative. Moreover, the Swiss Legislature functions on the basis of a large measure of agreement among the main political parties. It is not likely to make laws, which can be said to run contrary to public interest. The Federal Tribunal of Switzerland sits at Lausanne, while the seat of the Government is at Berne. This underlines the wish of the Fathers of the Constitution to stress separation of powers in Switzerland.

In Switzerland, the Courts of the First and the Second instance are all Cantonal Courts, and since there are no subordinate Federal Courts, the Cantonal Courts have to deal with the application of the Federal Law also. The Courts of the First instance are elected by the people, and majority of the Judges are lay men carrying on their occupation as they like. Thus, justice in these Courts is administered not so much on the basis of the knowledge

of the law, as on the basis of commonsense. In Switzerland, there are no juries in Civil cases.

The Swiss Courts are independent and impartial. Proceedings are cheap and needy persons can carry on litigation even free of charge and with the help of Cantonal and Federal funds. Rules of procedure are not very much formalistic and cross-examination does not play a very important part. The Swiss Courts are constituted on the Collegial basis, although in some Cantons, there are Courts where there are Single Judges. The competence of the Swiss Courts is less comprehensive and administrative cases cannot be brought before them. In Switzerland, "the Judges wear no robes, let alone wigs. They appear in a plain dark suit. We might describe as democratic the fact that in a number of Courts and even in the Federal Supreme Courts, the discussion of the verdict is public, so that both the parties to the case and the public, can watch over the Judges in their office."

CANADA

In Canada, the Judicial system resembles very greatly with that prevailing in England and is vastly different from that in the United States of America. The Constitution, being Federal and written, the Canadian Judiciary has to decide questions of jurisdiction, has to protect the rights of citizens against one another and other rights against other government, and has to give opinions on State questions which involve the interpretations of the British North America Act, or the constitutionality of Dominion and Provincial Legislation, when they are required to do so by the Governor-General-in-Council or by the Leiut-Governor-in-Council. At the top in Canada, there is a Supreme Court of the Dominion, established in 1875 by a Candaian Statute and consisting of a Chief Justice and 8 other Judges. Canada has no Federal District Courts as is the case in the United States of America. The Supreme Court of Canada is the Court of Appeal to which cases may be taken from the Appeal Courts of the various Provinces. The Judges are appointed by the Governor-General -in-Council and hold office during good behaviour. They must retire at the age of 75 and may be removed earlier by the Governor-General-in-Council on a joint address by both Houses of the Canadian Parliament.

The organisation and methods of operation of the Courts in each Province are left to the Provincial Legislature and these features in the Provinces are similar. In each Province, there is a Supreme Court, which is usually, divided into two divisions —The High Court of Justice and the Court of Appeal. The former is the Superior Trial Court of the Province having both Civil and Criminal jurisdiction. The Judges of the High Court go on regular circuit. The trial of Criminal cases is with a Jury,

although with the consent of the accused he may be tried before the Judge alone. Below the High Court are the County Courts exercising jurisdiction in smaller Civil and Criminal disputes. These Country Courts are usually presided over by one Judge, who also reitres at the age of 75. All these Judges are appointed by the Governor-General-in-Council. In addition to these Courts, there are minor Provincial Courts, for example, Probate Courts, Divorce Courts, Courts of Magistrates, Juvenile Courts and Courts of Arbitration. These are completely under Provincial control with regard to their organisation and maintenance. Finally, there is the Exchequer Court of Canda, created by a Federal law consisting of a President and 4 other Judges. It hears cases involving revenues, copyrights, trade marks, and Admiralty. Appeals from this Court lie to the Supreme Court of Canada. The Judges of this Court are also appointed by the Governor General-n-Council, hold office during good behaviour and retire compulsorily at 75.

Most of the Judges in Canda are selected from the distinguished Barristers from the Provinces who have served at least for 10 years at the Bar. The salaries of the Judges is handsome. At the head of the Law Enforcement Agencies of every Province, there is the Attorney-General who is appointed by the Premier of the Province and is the member of his Cabinet. The use of Jury is quite frequent in Canada particularly in the case of indictible offences. Jury Lists are prepared by the Sheriff, assisted by other Court officials, from lists previously made up from various sections of the County or District. As in England, in Canada also, there ia Summary Trial of Indictible offences, in which there is no Jury in usual trial ceremony. The rules of procedure governing Criminal litigation are made for the entire dominion by the Dominion Parliament at Ottawa. The rules governing procedure in Civil cases in the Supreme Court of each Province are made by a Committee of Judges of that Court. The training and education of the members of the Bar and the matter of their discipline is in the hands of the Provincial Law Societies, whose powers and authorities are established by law. The lawyer is subject to strict control not only on the part of these societies but also on the part of the Presiding Judge, who can reprimand him and impose fines for misconduct and even suspend him from practice. Criminal Law is very effectively enforced in Canada and appeals are not permitted on mere procedural errors. Jusice, on the whole, is swift. The control of the Attorney-General is tight; procedure is uniform throughout the country and the administration of justice is beyond the pale of malpractices; rules or procedure are largely non-technical; juries are chosen without delay and in lesser matters, the Judge can disallow a Jury. The Canadian Bar is of a high quality and as one authority has put it; "there is no place for the petti-fogger, a shyster, the ambulance chaser and the lawyer-criminal in the Canadian system."

THE U. S. S. R.

In the chapter on Fundamental Rights, we have already commented on the position of law and justice in the Soviet Union. According to the Communist theory, the State is a Class Institution, law is the will of the Bourgeoisie and its direction is determined by their economic interests. The doctrine of equality before the law is a myth. The Judges are leaders of the exploiters class and the courts are really the instruments of Capitalists to punish the working classes. According to this logic, crime is the result of social and economic maladjustments and if these inequalities can disappear, the entire apparatus of Coercive Law will also vanish and public opinion will be an adequate force to impel people to behave in socially desirable ways. But this will happen only when the ideal has been attained. During the transitional period, the Proletariat will have to expropriate the Bourgeoisie. Transition may be a long period. Abolition of capitalism will not automatically mean the disappearance of crime as such. During the transitional period, therefore, individual excess will continue and, therefore, Coercive Law will be indispensable throughout this period in order to enforce labour discipline, to regulate the unequal distribution of the products of society and to curb individual excess. According to the Soviet Jurists, Law and Courts in a given society shield the interests of the class which owns the means of production. The Soviet Law, therefore, is the expression of what is expedient for the construction of Socialism and to fight for it. A court of whatever description, is an organ of authority of the class dominant in a given state, defending and guarding its interests. The Soviet Courts, therefore, are intended to fight the enemies of the Soviet government and to fight for the consolidation of the new Soviet system and to formulate and inculcate the new socialist discipline among the working people. In the U.S.S.R. no distinction is made between public and private law and there is an integrated, centralised Judicial organisation. There is a single heirarchical system of Courts, which corresponds to the general heirarchical pattern of the Soviet organs of State power. The lower Courts work under the supervision and direction of the higher ones and the Soviet Supreme Courts is the only Court empowered to issue rules having a general binding effect. The Judiciary works under the eye of the C.P.S.U. and its decisions correspond fully to the Party laws. Like other officials, the Soviet Judge has to be a good Marxist, a dialectician, an experienced practical worker, deeply imbued with the spirit of the Soviet dynamism and the Soviet culture. The doctrine of independence of the Judiciary, therefore, has a special meaning in the U. S. S. R. inasmuch as it does not release the Judges from the duty to obey the Party decisions. Although under Article 112 of the Soviet Constitution, the J[illegible] are independent and subject only to law, in practice, they part of the socialist system of the country. They are largely

ted for a fixed time, and they can be recalled, if their work is unsatisfactory. In the Soviet Union, there is no doctrine of Separation of Powers in the sense in which they have it in the United States. All the organs of the government are duty bound to protect the socialist order, which is the running thread in the entire political process of the country. Again, in the Soviet Union, the system of lawyers is different from that with which we are familiar in India or that which prevails in the West. We have already examined this system earlier. It is enough to say here that there exists a distrust of the lawyers in the country, although the legal profession is recognised. Their scope is very much limited; their social status is low and their number is small. It is not the lawyers but the Judges who manage witnesses in the U.S.S.R. The penalties in the U.S.S.R. are, on the whole, severe.

The highest Judicial organ of the Soviet Union is the Supreme Court of the U.S.S.R. Below it, one can find the Supreme Courts of the Union and Autonomous Republics, the Territorial, Regional and City
National
bunals. [illegible]
and they consist of a Judge and two People's Assessors. The Courts of the second instance hear appeals against judgments of the lower Courts and these Courts consist of three members. The main link of the Judicial system is the People's Court which tries most of the Criminal and Civil cases. The Regional and Territorial Courts, the Courts of Autonomous Regions and National Areas, and the Supreme Courts of the Union and Autonomous Republics are not only Courts of first instance, but are also Courts of second instance, hearing appeals against sentences and judgments of the lower Courts.

The Supreme Court of the U.S.S.R. supervises the Judicial activities of the Judicial organs of the U.S.S.R. and of the Union Republics within the limits established by the Statute on the Supreme Court of the U.S.S.R. endorsed by the Supreme Soviet of the U. S. S. R. on February 12, 1957. The Supreme Court is vested with the right to initiate legislation and is accountable to the Supreme Soviet of the U. S. S. R. and in the intervals between its sessions, to the Presidium of the Supreme Soviet of the U.S.S.R. The Supreme Court consists of a Chairman, Vice-Chairman, People's Assessors elected by the Supreme Soviet of the U. S. S. R. as well as Chairman of the Supremd Courts of the Union Republics. The number of members of the Supreme Court is determined by the Supreme Soviet of the U. S. S. R. At present, it consists of a chairman, 2 Vice-Chairmen, and 9 members and in addition 20 Assessors. The Judges are elected for 5 years and can be removed earlier. No qualifications of a Judge are laid down by law, but in practice, they are men of legal qualifications and experience. The supreme Court is divided in three Divisions—Civil, Criminal and Military Collegiums. At times,

the Courts meet in Plenary Session in which the attendance of the Procurator-General is obligatory. In these Sessions, two thirds of the members of the Courts must be present. Decisions are adopted by a Simple Majority Vote. These plenary Sessions consider protests from the Chairman of the Supreme Court of and of the Procurator-General of the U.S.S.R. against sentences and judgments pronounced by the Collegiums of the Supreme Court of the U. S. S. R. and against decisions of the Supreme Courts of the Union Republics, if they contradict all-Union Legislation or infringe the interests of other Union Republics. The Plenary Sessions also make representations to the Presidium of the Supreme Soviet concerning questions to be settled in a legislative way and also on questions pertaining to the interpretation of all-Union Laws. The 3 Collegiums of the Supreme Court to which we have referred also act as Courts of First Instance. They hear cases with the participation of a Presiding member of the Supreme Court and two People's Assessors. The Law of 1957 has given more powers to the Courts of the Union Republics. This Law abolished all the Special Transport Courts, which functioned within the Railway and Water Transport Systems. The jurisdiction of these Courts has been transferred to the Courts of the Union Republics now. Thus, at present, the Judicial organs of the Union Republics hear all Criminal cases except those which are assigned to the jurisdiction of the Military Tribunals . The Military Tribunals are obliged to fight out any Criminal encroachments on the security of the Soviet State, the fighting capacity of the Armed Forces, military discipline and rules of military service established within the Armed forces of the U. S. S. R.

So far as the People's Judges are concerned, they are elected on the basis of Universal Adult Suffrage for five years. They must be Soviet citizens of 25 years of age. People's Assessors are elected by the Supreme Soviet of the U.S.S.R. and the Supreme Court of the Union and Autonomous Republics, by the Supreme Soviet of the Republics. The Courts of Territories, Regions, Cities; Autonomous Regions, and National Areas are elected by the respective Soviets of Working People's Deputies. Their term is five years. The People's Assessors perform their duties in rotation and have the rights of Judges when the Court is sitting. The Judges as well as the Assessors can be recalled prior to the expiry of their term and they are responsible to their electors. The Court proceedings are public and the accused has a right to defence. The Judicial proceedings are conducted in the language of the population of the given Union or Autonomous Republics.

We have referred to the office of the Procurator. This was set up in 1922. Originally he was intended to be the Supreme Observer of Law. Under the decree of the Presidium of the Supreme Soviet of the U. S. S. R. passed on May 24, 1955, the

Procurator has to ensure the correct and uniform application of the Soviet laws irrespective of all local differences and despite any local influences. The jurisdiction of the Procurator-General extends to the whole country and to all Ministries and Departments, Co-operatives and other public organisations. He can inspect all establishments including Militia and he can take any action to check any violation of law. He has to see that the law is obeyed by all the Ministries; he supervises the legality of the actions of the organs of enquiry and preliminary investigations; he examines the legality of sentences and the propriety of the treatment of convicts; he can institute Criminal proceedings against persons guilty of Criminal offences. In the Union and the Autonomous Republics, Territories, Regions, Autonomous Regions, National Areas and districts also, there are Procurators. All of them have the right, within their respective jurisdictions, to perform similar functions. They can demand all necessary information and documents from the persons concerned and they can verify the execution of laws on the spot. The Procurator General of the U. S. S. R. and all subordinate Procurators can protest against all orders, instructions and decisions which are in violation of the law to the organs of higher jurisdiction. Every Procurator has to consider complaints of citizens, regarding violation of the law and they have to protect their interests as guaranteed by the law. The Procurators are given extensive powers for the purpose. While the Procurator-General is appointed by the Supreme Soviet of the U. S. S. R. for a term of 7 years, the subordinate Procurators are appointed by the Procurator-General for a term of five years. Area, District and City Procurators are appointed by the Procurators of the Union Republics subject to the approval of the Procurator-General for five years. The strictly centralized character of the Procurator's Office, its organizational autonomy and its independence of any local organs of state power does not, however, give any grounds for regarding it as a "state within a state". In their work of supervising the ... ting crime, the ... with the judi- ... well as public organizations and societies. The Soviet Procurator's Office invariably maintains close ties with the working masses, regarding such ties as a guarantee of its successful functioning.[1]

CONCLUSIONS

From this treat ... drawn In the first place, ... If the middle-of-the-night-knock- ... ere should be the spirit of rule of law in a community. Secondly, the strength of a judiciary lies

1 *Soviet State Law.* A. Denisov and M. Kirichenko, p. 318.

not merely in the high quality of a judge, but also in the judicial temper of the people, and an honest and effective Bar. Thirdly, the Executive must show the necessary respect for the Judges, and the Legislature must be prepared to accept certain limits on their law-making power. Fourthly, in matters involving social and economic policies, the hands of the judiciary should not stretch beyond a certain limit. It is important to realize that to be effective, the administration of justice must satisfy the criteria of integrity, acceptability, predictibility and flexibility. Legal justice, it must be stressed, is not simply a matter of applying known rules to facts objectively given, it presents the problem of advising institutions and procedures that will work impartially, that will elicit evidence and weigh it judicially; that will see the facts in the light of the law alone without allowing judgment to be swayed by either fear or bribery. Since the rules of a society are not only principles for determining disputes, but also guides to the probable results of our actions, it is important that we should be able to see fairly clearly how the rules would apply to our own cases. If the rules are secret or so vague that all or most decisions were unpredictable we could not plan our life with confidence and security. It is true that we cannot have rules so precise and inflexible that they cannot be adjusted to take account of unusual but relevant factors. But it must always be possible to distinguish the exceptional case from the standard type for which the rule is designed. Finally, it must be said that unless there is a form of political, economic and social organisation, which ensures security, comfort, happiness and prosperity to the peoples of a country, no judiciary can go a long way in doing justice. Men cannot be made virtuous by punishment alone; much depends on the content and the intent of the laws. If the laws are intended to ensure social justice, judiciary will be an instrument of democracy; if the laws embody the interests of the business barons and magnates, the Courts of law will be in the hands of the tall popies doing not justice but injustice.

9

THE LEGISLATURE

Of all the organs of the Government, the Legislature is by far the most important in at least those cases where democracy is the accepted way of life. It not only reflects the popular trends, it also determines the composition of the government and its policies and it prescribes the ways in which political power would ultimately be used. The operations of a Legislative Assembly in a democratic State are co-terminous with those of public opinion; at a certain point, their frontiers coincide. In Unitary states, the Legislature defines the limits of centralization and demarcates the area of Local Self-Government. In countries where the Constitutions are written, the lacunas and loop-holes in the administrative machinery are filled in by Legislative action. Where there is no form of separation of powers, the Legislature lays down the boundaries of concrete action with regard to the different wings of the government. Where the Legislature is supreme and sovereign, as in England, there is no difference between what it can do and what the electorate can do, for, the Legislature becomes directly the agent of the people. Even in Presidential types of government, the Legislature occupies a key position, for, there are many things, which the Executive and the Judiciary cannot do together. If democracy is government by consent, law becomes the basis of administration and the Legislature gets on to the centre of the stage. After all it is through law that individual rights are enforced, revenue is raised, expenditure is incurred, internal peace and order are safe-guarded, and justice is administered. In many countries the Legislatures have an important play in the process of amending the constitution. In countries like Switzerland and the U. S. S. R., they have even elective functions. The Upper Chambers in several states (as in Britian), have judicial functions, both Original and Appellate. At places they have an important share even in the executive sphere. In the United States, for example, the consent of the Senate is necessary for the appointment of high officers and for the enforcement of treaties. According to the strict theory of the Constitution, under the Third Republic in France, the consent of the Senate was necessary for the dissolution of the Lower

House. In short, in modern democratic states, a National Legislature, elected by and responsible to the people, and invested with power to make, alter, and repeal laws, is an indispensable part of the democratic machinery. Even in those communities which make an extensive use of Initiative and Referendum, the Legislative body has not been abolished. The popular checks upon the Legislature only seek to control but not to preclude the exercise of discretion by the people's elected representatives.

THE GROWTH OF LEGISLATURE

In ancient times the concept of an elected Legislature was not known. The power of law-making resided in the hands of either the Monarchs or in the hands of small Assemblies based on privilege. Sometimes before the laws were actually made, the rulers used to consult the chosen represenatives of the landlords and other influential sections of society. In Germany, the Teutons had established the so-called Folk-Moots, consisting of the natural leaders of society and deliberating on the common interests of different sections. In the British Constitutional history one comes across the Witanagemot, which was the Supreme Council of the realm. It consisted of the King, his wife and sons and the chief nobles of the land, including Archbishops, Earls, Abbots and the wise men of the Kingdom. This body used to assist the king in the work of the government; it was neither a representative nor a large assembly. All freemen were entitled to attend the meetings of the Witan, although for various reasons this right was not generally used. The largest number recorded as having attended any meeting, is 106. On great occasions such as Coronation or threatened invasion, an immense concourse of people would assemble and would applaud or dissent from the proposals of the Nobles. Witan could elect the King from the royal kin, and depose him for misgovernment; grants of royal land were subject to its consent; it was the Supreme Court of Justice; it could make laws, declare war, assent to treaties, levy taxes, appoint and remove important officers of state, and exercise considerable control over the national militia. It must be emphasized, however, that those extensive powers were generally not wielded. During the Norman times, this body was replaced by the Magnum Concilium or the Great Council, which used to meet three or four times a year at the call of the king. It helped him in establishing policies of state, reviewing the conduct of administration, administering justice, and on rare occasions, in making and amending laws. In the 13th century, from this body, the two Houses of the the British Parliament started coming forth. In 1295 the Model Parliament met. The main reason for this development was that the kings found occasional meetings of the barons, the clergy, [illegible]. Since the knights [illegible] elected, the Parlia- [illegible] body. The system

of representation in the Legislature, thus, arose in the desire of the needy kings for revenue. Whatever be the origins of the Representative Legislature, it can safely be said that the foundations for it were laid in England by the joining of the elected county and borough members to the magnates of the Council.

When the members of the Model Parliament met, they formed one assembly representing "three Estates of the Realm". It is interesting that these 3 estates did not continue to form one House and that gradually they became divided into two Houses instead of three. This change was not effected suddenly; no revolution occurred; it was merely a gradual development. The greater barons and more important clergy were drawn by community of interest into a single body (House of Lords), while the lesser barons joined forces with the county freeholders and Burgesses (the House of Commons). The minor clergy dropped out altogether. While the exact date of the separation of these two Houses is not known, the change was effected before the middle of the 14th century. Within less than 100 years after the Model Parliament, the bicameral system became an established fact and significantly influencing the future course of the British History. This arrangement spread to all parts of the world. In Europe, the development of the Parliament was obstructed by feudal privilege for a long time. In France in 1302, for the first time an assembly consisting of the highest feudal lords, the clergy and the townsmen met as merely an advisory body in order to advise the king and receive messages with regard to the state affairs from the king. The French kings gradually realised that it would be impossible for them to raise the revenue without securing the goodwill of this body. The meeting of the Estates-General, therefore, became more frequent. But, in France, unlike Britain, there was hardly any accumulation of experience with Representative Assemblies. French Parliamentary history is telescoped into a single century with the result that the French people could not acquire the requisite experience to manage the difficult and intricate working of Constitutional Representative Government. While in Britain, the kin [illegible]
limited [illegible]
to join [illegible]
absolutism, in the case of France, the kings were rather weak and the comparatively more powerful barons grew weaker with the the passage of times. Gradually they were eliminated from the Third Estate and looked more and more to Royalty for protection. If the gradual weakening of Monarchy in Britian paved the way for political democracy, the gradual decline of nobility in France prepared the ground for political absolutism. Geography reinforced this historical trend. France, having an open land frontier in the East, stood in constant danger of attack and needed a powerful centralised authority for defence. Once established, this authority was also available for purposes of national extension, whenever an ambitious Monarch like Louis the XIV occupied

the throne. Thus, it happened that in France no Legislature, in which the legitimate complaints of the people could be publicly debated, was permitted, and the Estates-General was only convoked in times of great crisis. Indeed, after 1614, it was not convened at all until 1789. The original Legislatures in Britanny, Bergundy and Langue Doc had similar character and fared no better.

It was only in the 19th century that the forces of Industrial Revolution, Nationalism and Socialist ferment extended the frontiers of democracy and the need was gradually felt in large parts of the world that the Legislative Assemblies must be formed and given wide powers. As the wealth and population of the state increased it became more and more difficult to govern along autocratic lines. Numerous interests arise, which do not receive adequate attention from the rulers; men whose capacity and intelligence deserve recognition are insulted, and the private interests of the ruling classes absorb most of their energy to the neglect of public interest. Under such conditions, the only alternative to the use of force on a large scale is either a system of decentralization or the development of a system of representation whereby important interests of persons may receive due rcognition. This last possibility obviously involves a national application of the idea contained in the organisation of a primitive horde or village community. Through gradual stages, the idea of full-fledged representation thr[illegible] and the rapid development of [illegible] the balance of power from the [illegible] became the main pillars of democratic Legislative Assemblies all over the world.

THE FUNCTIONS OF LEGISLATURE

The fundamental function of a Legislature is of course, to make laws and to create and express the will and policy of the state on the national and local level. The extent to which it controls the creation or expression of that policy, and the degree to which it participates in other aspects of the governing process, vary from country to country and are defined by constitutions and laws. It may involve, the enacting, revising, tinkering and repealing of the laws. In politically backward communities its law-making function was merely that of a Registration Chamber-registering the will of the Absolute Monarch offering an extremely mild opposition to him. [illegible] until recently and also o[illegible] developed political consc[illegible] powerful with regard to the making of the laws. This is true today of Britian, America, India and other democratic countries. Here the Legislature, of course, functions more or less under the guidance of the executive. But because the executive is democratically constituted, the resulting guidance and the subsequent legislation is also democratic. The legislative policy becomes

organic and definite; the legislative programme is no longer based on whims and fancies; the whole programme is based on people's mandate. Then, again, there are states where the power of the Legislature to make the laws is limited by the rights of the people to initiate the laws or to give their verdict on the laws which may be introduced by the Legislatures. Such a system prevails in Switzerland.

The law-making function of the Legislature in recent years has been influenced by many factors. In the 19th century in Britain the Parliament was comparatively speaking free in so far as its legislative activities were concerned. It really legislated with the advice of the Cabinet. Today, a strong and tight party organisation has made the Cabinet extremely powerful, so that it is the Cabinet which may be said to legislate with the consent of the Parliament. All Cabinets maintain their own Legislative Committees; they formulate their own legislative policies; they have almost a mechanical majority in the Legislature; they are the master of the rules and procedures in the Legislative Assemblies; and they can control and regulate the time-table of the Legislature. Elections have become extremely costly. The size of the electorate has grown wide; a large number of voters have got to be wooed and organised. Means of publicity and propaganda have got to be used on a large scale. All that involves strict party discipline. All this makes the election not only expensive but also uncertain. Elections are fought on the basis of legislative programmes. In countries having Parliamentary form of government, the Cabinet has the power of deciding on the question of dissolution of the Legislature. Circumstances such as these have enabled the Cabinet to exercise a tremendous control over the Parliament. Any law proposed by the government is sure of its smooth sailing in the Legislature; any law introduced by a private member but unsupported by the government has no chance of passage. Most of the Legislative Assemblies today are over-worked. The complexity of life in general is fully reflected in the complexity of laws which average member of the Legislature cannot easily follow. The initiative, *is, therefore, best left in the hands of the executive.* In a previous Chapter we have discussed the impact of pressure groups and lobbies. Most of the important business interests keep the members of the Legislature under heavy pressure. In all democratic countries today, there is a flood of delegated and subordinate legislation, which means that a large part of legislative work is transacted not on the floor of the Legislature, but in the closed rooms of the Administrative Departments. Theoretically these executive rules, regulations and orders are subject to the approval of the Legislature, but in actual practice, an over-worked legislature, consisting of laymen can hardly cope with the amount of complete work that comes to them. On numerous occasions, governments appoint Expert Commissions to undertake investigations and enquiries into numerous public issues. The reports

of these Commissions carry a prestige which can easily overawe even the most active legislators. After the Second World War, the world has been living constantly on the brink of a war; practically every year there have been international crisis. Considerations of national security have become paramount. This state of affairs is conducive to the growth of executive powers and conversely to a decline in the authority and prestige of the Legislature. The general feeling develops that it is the executive alone which can defend the country against foreign aggression. In most of the Constitutions today, there are provisions for emergency, during which extraordinary powers can be assumed by the Executive. Again, there is a great deal of difference between the quality of the executive and the quality of the Legislature. Talent and ability are not attracted by the Legislative Assemblies. Second-raters, all wishing to speak on all varieties of subjects in order to get cheap popularity or publicity can hardly compete with a set of people who are experts, better informed, disciplined and determined to see policies through. Lack of discipline in the Legislature of Asian countries is notorious—walk-outs are staged; unseemly exchanges take place frequently; shoes and mikes are hurled by the law-makers at each other; the bonafides of the Speaker are challenged; disorderly scenes have become the order of the day.
of the world . [illegible]
the use of th[illegible]
value of the debates and affected the quality of the legislation. The independence of members is gone. The spirit of democratic equality, as Lord Bryce remarked long back, has made the masses of the people less differential to the class whence legislators used to be drawn.[1] The members of the Legislatures have become a class in themselves and they can get away with impunity for all their lapses under the protection of privileges and immunities. While this gives them the freedom to say anything on the floor of the Legislature, it tends to make them irresponsible and tempts them to fall below the standards of decorum. The plane of conduct therefore, becomes low. The average legislator runs after the press and fears the newspapers. The existence of a large number of political parties and groups in many legislatures is also partially responsible for their decline. In some cases, there is also a feeling that the legislators, really speaking, do not correctly represent the voters and that they are there just because the electoral system favours a particular party or because they are richer than others. All these factors have adversely affected the law-making function of the Legislatures.

Another important function of the Legislature in some countries is to amend the Constitution. In Britian, the Parliament is as free to change the Constitutional law as the ordinary law. There is no special method of altering the Constitutional Law of

[1] *Modern Democracies*, Vol. II p. 370.

the land. In the United States of America, the amendment of the Constitution cannot be undertaken by the Congress alone, but requires the co-operation of other bodies outside. In Newzealand, the Legislature can amend the Constitution by the same process as any ordinary law (Newzealand Constitution Act of 1947). There is no substantial difference between this position and the one that prevails in England. In the case of India, part of the Constitution can be amended by the Union Parliament by the the same method by which the ordinary law of the land can be made. Those clauses of the Indian Constitution, which begin with the phrase "until Parliament by law otherwise provides," can be so amended. Part of the Constitution can be amended by special majority of the Union Parliament, and some parts can be amended by the special method laid down in Article 368 of the Indian Constitution requiring action not merely by the Union Parliament but also by the State Legislatures. In general, it can be said that there are constitutions which are supreme over the Legislature, that is to say, which cannot be amended by the Legislature, as in the United States, Australia, Switzerland, Ireland and Denmark,. But then, there are Constitutions which are not so supreme and which can be amended by the Legislature. There are those constitutions whose amendment requires a special process and in which the process is not within the sole competence of the Legislature. Then, there are those constitutions which provide that amendments in whole or in part may be made by the Legislature but only if a special majority is obtained. The examples of this are the U. S. S.R., South Africa and Finland. A limited role is played by the Legislature in Constitutional amendments in a country like Belgium. When the Belgium Parliament proposes an alteration in the Constitution, a dissolution of both Houses follows. After the General Elections the amendment is passed if at least two thirds of those present vote in favour of the proposed amendment. Here the actual amendment is really made by the Legislature and to that extent the Legislature can be said to be supreme over the Constitution. But the provision of a General Election between the two votes comes near to a requirement that the amendment must be submitted to the electors for approval. In practice, that would mean that the electorate and not the Legislature is supreme over the Constitution, for, the concurrence of the people is required for any change. A similar position prevails in Holland, Sweden and Norway. In Columbia and Ecuador, an amendment must be approved by a majority in each House in two successive Congresses.

There are countries where a reference to the people on the question of the Constitutional amendment may occur but need not. Under the constitution of the Fifth Republic of France, an amendment must be submitted to a Referendum unless it is carried by a 3/5th majority in a joint sitting of both Houses—the Senate and the National Assembly. Under the Italian Constitution of 1948, a proposed amendment approved by the Legislature

must be submitted to a Referendum, if within three months 1/5th of the members of the Lower House or 5 lakh voters or five Regional Councils so request, unless the proposal was carried by a 2/3rd majority in each House. In Chile, an amendment must obtain first a majority in each House sitting separately and then a majority in both Houses sitting together and with a majority of its total mebership present, but it may also be referred to a popular vote by the President. These examples will be sufficient to indicate the importance of the Legislature in matters of Constitutional amendment.

A third function of the Legislatures in modern states is the control of National finances through taxation, borrowing, and a appropriations. In most of the countries the rule is that public money cannot be raised or spent without Parliamentary sanction. Proposals for raising and spending money usually come from the executive and the right of private members to propose new items of expenditure is restricted because this puts a premium upon particular interests instead on the general interest or upon particular interests instead on the general interest or upon the immediately apparent instead of the more essential. It is among the the first duties of the Legislature to vote the Annual Budget at the beginning of the Financial year. Control over money is one method through which a legislature controls the government. There are other methods also available to it. While no Legislative Assembly can directly administer a country, it can exercise powers of superintendence and supervision by asking questions about the routine of administration, protesting against the abuse of powers by officials, obliging the Ministers to explain the policies of their departments, and in some cases rectifying foreign treaties and certain key appointments. It is absolutely essential for a Cabinet to retain the confidence of the Legislature in a Parliamentary Democracy. It is in its interest to keep the Legislature well informed about matters of policies just as it is in the interest [illegible] ly informed of what [illegible] specially of what it [illegible] rcised through votes of censures, votes of no-confidence, the question-hour, interpellation, motions of adjournment and general debates and discussions. In Presidential type of states (as in the United States), the Legislature cannot, of course, oust the Excecutive from office, for the American system rests on the theory of Separation of powers. But even there, there is the doctrine of checks and balances, which associates the Legislature with many executive functions and which permits it to control the administration by withholding funds for certain agencies or even by abolishing such agencies outright. Even though the American Congress neither chooses the President nor removes him except by impeachment, and although at times, the President may belong to one political party while both Houses of the Congress may be dominated by another, the two branches of the government impinge closely upon each

other. Both have to move together. Delegated Legislation, to which we have already referred, is another link between the Legislature and the Executive. In the case of Switzerland, the power of the Legislature with regard to supervision of the Executive is limited, because there the Ministers cannot be removed from office by a vote of no-confide
yet they participate in the
have to explain their policies t
however, the Legislature can be extremely effective with regard to this supervision. In 1935, the British Foreign Secretary. Sir Samuel Hoare was made to resign on the issue of the Hore-Laval Deal. The removal of Mr. Menon as the Defence Minister of India in November, 1962 cannot, of course, be ascribed to parliamentary pressures.

Connected with this is the duty of the Legislature to function as an instrument for the ventilation of popular grievances. No government can satisfy everybody, and some governments fail to satisfy some interests, important and unimportant very badly indeed. As Laski has said, it is inherent in the nature of a democratic system that any man or group of men, who can persuade a member of the House to raise his grievances, should have the opportunity of getting it discussed. "It may be Mr. O' Brien, who is arrested without due process of law at the instance of the Home Secretary. It may be Miss Savidge who is severely questioned by the police after being acquitted in a Court

ships. It may be the official Opposition, either moving a general vote of censure upon the government or claiming a day to insist upon what it belie
conduct of foreign
method may be as
or as dramatic as a
urgency. The essen
may be ventilated and that the government, as best as it can, must seek to produce a satisfactory answer to the claim of grievance".[1] It is by function of this nature that a Legislature justifies its exis-

a vital link in the democratic process. It is true that questions may be evaded or that discussion may be merely formalistic. Votes of censure may not be carried; votes of no-confidence may

1 Laski: *Parliamentary Government in England*, p. 147.

until there was an uproar in the House and the Government had to promise an enquiry. A bad Railway accident takes place in the South and an anxious opposition joins forces with other members of

dramatically resigns. China nibbles at the territory of India; the Government hides information; the Opposition suspects a foul game; questions are put; and debate is demanded, until the Government is obliged to place all information at the disposal of the people.[1] It is only a democratically constituted Legislature that can do it. It can invite the attention of the Government to the mischie
departr
cloak o
point out its sins of omission and commission, bureaucratic habits would certainly develop in the civil service. The Legislature appoints Committees and Commissions to go into many problems, which are in need of critical examination. Much, of course, would depend upon the personnel of these Committees. But the very fact that a Committee report will be before the House for open discussion, will put the government in a reasonable frame of mind. It is only on the basis of the information which a Legislature can extract from the government and the publicity to which the hidden secrets of the government can be exposed which distinguish a democratic government from a Fascist regime. Its proceedings may be mechanical, even dull and pointless; the results of the debates may be a foregone conclusion. No political party is willing to change its stand as a result of a debate. The ayes would remain ayes and the nayes would remain nayes. But notwithstanding this, the Legislature is "an attractive talking shop" and is "an alternative to the Conc
able to discuss, does not
to maintain interest in
inability to effect the compromises that maintain social peace. It is wrong to assume that a debate which is exciting is alone useful. Excitement is the outcome of crises and a Legislature that is in constant excitement, does not show symptoms of health. What counts is not the rhetoric of discussion but its total impact on public opinion. What is said in the Legislature, will be printed in hundreds of newspapers. A member of the Legislature may be a known cranky, but he may occasionally make a point which attracts notice. A democracy, it has been said, lives by the spoken word, and what is said in print about that spoken word. Great things are usually said on great occasions and great occasions are rare. As a man cannot afford to live 24 hours all the 365 days in a world of make-believe; to try to live on the cinemascreen is

1 Mr.K.D. Malviya was made to go on the issue of the notorious Serrajuddin affair (June 1963).

likely to make you morbid and a nation which seeks to live on the diet of great occasions, is sure to decline. So much then about the dullness of the Parliamentary debates. Daily discussions are bound to be dull.

Reference may also be made to the selective function of the Legislature. It is in the Legislature that you make or mar your career as a great leader. You may begin as nobody; you may fumble for words in your maiden speech and you may conceive thrice without bringing forth anything. But in course of a few months or a few years, you may speak the language of a volcano. You begin your career in the Parliament in a most unnoticed fashion, occupying a back bench somewhere. It takes you sometime in getting on to the front bench. The journey is long; it may [illegible] you attend the Legislature, you are in a big examination hall; your test is continuous; you can suddenly find yourself on top by making a speech which will leave a long trail behind and whose echo will be heard in the long corridor of history. You may impress with your character, your ability, as the late Dr. Shyama Prasad Mukerjee did; occasionally you may rise to tremendous heights as the late Mr. L. S. Amery did when he called upon Chamberlain in 1940 to go; you may try to be funny and create a lot of mirth and humour, as sometimes Mr. Mahabir Tyagi does in the Indian Parliament. It all depends on the amount of feeling that you may inject in what you are saying, even though haltingly. It is said about the British House of Commons that it tends to distrust the clever man who tries to score points and that it is a very difficult assembly to bully, even from the front benches. In any case it is in the Legislature that you display your human and intellectual qualities, and you show promise for the future. The Legislature constantly educates you; it teaches you parliamentary technique; it tells you when to strike and where to strike; when to be firm and when to yield. This is the import of what Sir Sidney Low calls as the Selective function of the House of Commons. A Legislature in a democratic society serves as its brain trust.

Finally, we may refer to certain miscellaneous duties and functions of Legislatures. It may be given powers with respect to elections; it may have a right to impose restrictions; on freedom of trade and commerce. In a country like India, the Central Legislature has the power to abolish or create Legislative Councils in States, to admit new States into the Union and to alter areas, boundaries or names of states. It can determine the salaries and allowances of Ministers. It makes laws to give effect to International agreements and this is true of most modern democratic states. It gives reality and substance to fundamental rights and civil liberties. It can sit as a Court of Impeachment, as the American Senate, the British House of Lords and the Indian Council

of States can do. It can function as an Electoral College to elect members of the Executive. In India, it elects the President and the Vice-President; in Switzerland it elects members of the Federal Council; in the U.S.S.R. it elects the Council of Ministers. It is [illegible] Emergency. In Federal States, it works as one of the most important forces of unity. In short, it constitutes the centre of gravity in a society.

THE ORGANISATION AND STRUCTURE OF LEGISLATURES

BICAMERALISM : CASE FOR AND AGAINST

The most important principles underlying the organisation of Legislature in modern democratic states can be easily enumerated. These are (*a*) Bi-cameralism, (*b*) formal parity of powers in the two Houses but substantial dominance of the Lower House, (*c*) the Universal Adult Suffrage and Direct Ballot, (*d*) representation according to population in the lower house, indirect elections of the upper houses, large-scale use of Committees, disciplinary powers of the Presiding Officers, and rules of procedure.

One of the firmly settled principles of Legislative organisation is the bicameral form of Legislature. In the United Kingdom, the Legislature consists of two Chambers—the House of Commons and the House of Lords; in Canada, the House of Commons and the Senat[illegible] and the Senate; in [illegible] Senate; in India, t[illegible] tates and in Ceylon, [illegible] imilarly, the Legislatures in the United States of America, France, West-Germany, Switzerland, the U.S.S.R., Italy, Japan and many other States are bi-cameral. Newzealand and the Federation of Rhodesia, and Nyasaland have Single Chamber Legislatures—the House of Representatives or the Federal Assembly. In some states in India—Bihar, Madhya Pradesh, Madras, Punjab, Uttar Pradesh West Bengal, Andhra Pradesh, Gujrat and Maharashtra—the Legislatures are bi-cameral, the Upper House being the Legislative Council and the Lower House—the Legislative Assembly. In other states, there is only one House called as the Legislative Assembly.

We have already indicated the historical origins of bicameralism. It is from England that this pattern has spread to the rest of the world. In the United States of America, the British pattern was found to be of particular interest, because a part from the force of tradition of the mother country, a bicameral Legislature would be a fit instrument of Federalism. The Lower House in a Federal Constitution, gives representation to the people as a whole, the

Upper House gives representation to the Constituent States. The Lower House accords representation to the common people, the Upper House accommodates privilege and property. Those who suppose that the Senate in the United States was intended merely as a check upon the House of Representatives, misunderstood its origin and design. "The Senate", as Mr. Colvin writes, "was intended as a guardian of property generally, and specially of the landed interests, the Yeomanry of the States". In India bicameralism came as a matter of course—the force of British tradition and the need for giving protection to vested interests. At times it proved to be abortive. In 1651, Cromwell provided for a one-House Legislature. In Britian, the Labour party passed a resolution in 1934 that when they captured power, they would abolish the House of Lords. In countries like Greece, Bulgaria, Yugoslavia and Turkey, there are Unicameral Legislatures. In short, the efforts at Unicameralism were made but these efforts led to survival of bicameralism after the establishment of democracy is due partly to tradition and imitation and partly to other factors also. Where a national state is formed—as were the United States, Germany and Switzerland—out of states or Cantons, which ... ameral Parliament ... ocal interests in the ... , and of achieving balance and harmony between these interests. In countries like France, bicameralism has been established largely to provide a check by a conservative Upper Chamber upon the presumably rash, ill-conceived, ill-advised or radical legislation emerging from the popular Chamber.

The Progressive parties all over the world stand in favour of a Unicameral Legislature. In fact the controversy *Bi-cameralism* v. *Uni-cameralism* is a very old one. There are ardent defenders of both points of view. The advantages of a Second Chamber are the security it gives against hasty legislation and the opportunity it provides for full consideration and revision of every bill passed by the Lower House before it becomes law. The case for Second Chamber is that it may provide an appeal from Phillip Drunk to Phillip, the Sober. Explaining the need for a Second Chamber to Jefferson, George Washington poured a cup of boiling tea into a saucer to let it cool. "Thi ... the Second Chamber". Ar ... of business in the Lower ... counsel of men who might ... but whose knowledge and experience enable them to make an invaluable contribution to the Government of the country. According to J. S. Mill: "a majority in a Single Assembly easily becomes despotic and overweening, if released from the necessity of considering whether its acts will be concurred in by another constituted authority". The same reason, he argued, which induced the Romans to have two Consuls, makes it desirable that there should be two Chambers, that neither of them may be

exposed to the corrupt influence of undivided power, even for the space of a single year. Moreover, an Upper Chamber also provides for the representation of individual states in the case of a Federal Union, such as Australia, where each state sends ten Senators to the Federal Parliament. In this case, the representation is on a state and not on population basis. Indeed in the Indian Parliament, the Second Chamber is actually called the Council of States. It is also contended that a single all-powerful Legislative Chamber can too readily dominate the executive branch and thereby nullify, in practice, the separation of powers widely regarded as essential

system is that it provides for more thorough discussion of proposed legislation, that it provides a system in which the two Houses check

and excitement, emanating from the lower House. Marriot goes so far as to say that the experience of history has been in favour of two Chambers and that even states like England which tried the Unicameral experiment during a period of social disorder, went back to the orthodox pattern after a short period of years. No

a Second Chamber. Bicameralism ensures a more correct interpretation of general will. A single House, specially if all its members are elected at one time, tends to grow out of sympathy with popular opinion before the expiry of its term. Two Houses

On the other side, equally powerful arguments have been advanced against the bicameral Legislature. The famous dilemma of the Abbe Seiyes is: "If a Second Chamber dissents from the first, it is mischieveous; if it agrees with it, it is superfluous". It is argı
delay,
proper ,
one House often tries to shift responsibility to the other, a unicameral system concentrates responsibility. A two-house Legislature can be compared to a cart with a horse hitched to each end both pulling in opposite directions. A truly representative and populary elected body should not be subjected to checks and delays interposed by an Upper Chamber elected or appointed on an undemocratic basis. A Cabinet system like the British or the

Indian in which the Executive has an absolute power of veto on all legislations, makes the cooling or revisory function of a Upper Chamber rather unnecessary. As the complex problems of an industrial age place heavy burdens upon the government, deadlocks frequently occur between the two Chambers, specially where the Upper Chamber is avowedly aristocratic or conservative in composition. Where (as the Third Republic of France) the Cabinet had been made responsible to both Chambers, this situation contributed to the weakness and instability of the entire government system, tending to refute the claim that the bicameral scheme was a greater guarantee of balance and harmony. The deadlocks to which we have referred, lend encouragement to reaction and thwart progress. Bicameralism divides the society between those who look forward and those who hearken back; it seeks to divide the Sovereign power and destroys responsibility. If the two Chambers are constituted on the same basis, one of them becomes a superfluity; if they are constituted differently one will necessarily be democratic and the other necessarily antidemocratic and, therefore, obnoxious. In a democracy, it is the lower House which will be the main centre of attraction and which will give the lead; the other house will be looked upon as obstrucive obstructionist and as an anachronism. The Upper House will, become the fortress of Conservatism and reaction. It will sleep and snore when conservative forces would rule; it will leap to life when the Radicals capture power. It will never be impartial; it will throttle progressive legislation demanded by the people and would, therefore, function in a partisan spirit. Even in Federal types of states an Upper Chamber is really speaking, unnecessary, for, the best interests of the Constituent states are duly protected by the division of powers and by the doctrine of Judicial Review. In many Federal countries, Upper Houses are really ineffective in giving any protection to the interests of the Units. In Canada, most people like to go to the Cabinet rather than to the Senate; in India, the Rajya Sabha is almost powerless as a Federal instrument and instead of protecting the interests of the states it has, in practice, strengthened the Centre. Willoughby pleads for the abolition of the Senate in the United States and suggests that by such action, the structure of government would be materially simplified, responsibility for action would be more definitely located, the establishment of effective co-operation between the Legislature and the Executive would be rendered easier and the whole process of legislation would be facilitated and made more responsive to the public opinion. It is not correct to argue that two Houses are always better than one, whatever the basis of composition of the Upper Houses. It is an unrealistic argument. Again, it is difficult to say how an undemocratically constituted Upper House can really contain the so-called tyranny of the majorities. The theory of despotism of a single Chamber is concocted by men of property and has no legs to stand on. To argue that the existence of a Second Chamber is a guarantee of liberty,

is to make a fetish of privilege. To argue that a Second Chamber interposes delay between the introduction and final adoption of a measure and that it permits time for reflection and deliberation, is to forget the elaborate law-making procedure employed in most legislatures today. The lower Houses all over the world take a fairly long time in discussing and passing a Bill and it is passed by them only after eliciting public opinion. The parties today, are highly organised and the legislative programme of the party in power has already been approved by the people. What else will the Upper House do by way of eliciting further public opinion? Controversial Bills take a long time in getting passed through the lower houses. In India, the Hindu Code Bill took more than seven years; in Britain, the Irish Home Rule was debated for thirty years before it became a law, the question of the reform of the House of Lords has been before the country for more than fifty years; the legislation on Education in Britain took more than 20 years; the democratisation of the House of Commons and the necessary legislation for it took more than a hundred years in Britain. All these facts clearly indicate that the slow and lengthy process of modern legislation leaves little chance for hasty and rash legislation. Special interests and classes can be given adequate representation in the lower house. In short, a single chamber affords a simpler, more direct, and more expeditious method of legislation; it centralises authority and fixes responsibility; it is more responsive to public opinion. Most of the Upper Houses in the world are out-moded and out-dated. In Britain, the obstructive tactics of the House of Lords are well known and its members, like the French Bourbons, learn nothing and forget nothing. The American Senate has been predominantly conservative. That is why movements in favour of Unicameralism are under way in many American states and even in India. In Britain, the labour party stands for a more drastic reduction in the powers of the House of Lords. It has been observed that, these days, reflections in a sense of responsibility do not characterise the working of an Upper House. Bills are usually rushed through during the last few days of the session and most of the representatives are often found sleeping in the retiring rooms, when important bills are under discussions on the floor of the House. One of the common arguments in support of the bicameral system is that it increases the difficulties of getting measures through the legislature by means of bribery and corruption, or measures which are objectionable upon their intrinsic merits and for which there is no popular demand or necessity, . But as one authority has put it: "those who rely upon this argument, overlook the fact that the device works both ways, since it may serve to delay or prevent the enactment of good laws as well as bad ones." In our view, therefore, there is a very strong case for Unicameralism. Exper[illegible] that Second Chambers often cause dead-locks, [illegible]
in a la[illegible]
House [illegible]

will kill it. The added expenses of the bicameral system causes a drain on the exchequer. We may therefore, conclude that single, popularly elected and small Chamber will best secure responsibility, deliberation and correct representation. The future is with Unicameralism; Bicameralism is only a transitional phase.

AN IDEAL SECOND CHAMBER

Although the existence of a Second Chamber has hardly any justification in the modern context, the fact is that in most states it exists. While the will of the people is reflected in the lower house, an upper house, which is nominated or hereditary has no authority to oppose it. If we try to analyse the basic elements of an ideal Second Chamber, the nature of the difficulty involved in attempting [illegible]

[illegible] lower house. It should have a distinct personality of its own (*c*) it should be responsive to public opinion, should be responsible and yet independent. We may add that it should not be merely a tool in the hands of the lower house nor should it run counter to those basic purposes which the lower house seeks to embody. It should not be able to [illegible] doing. It should be [illegible] be a store-house of expert knowledge [illegible] the community. Its members must be able to speak with a sense of authority on matters of public importance such as agriculture, self-Government, diplomacy and International affairs. While the Lower House in an ideal scheme must represent the changing currents of public opinion, an ideal upper house, without denying progress, must be able to represent experience, without regard to party difference. To these qualities may be added the limited term of the upper house. An ideal Second Chamber should obviously not be hereditary as the British House of Lords. Its tenure should be longer or shorter than that of the lower house, but the vital point is that it should be specific. It may be made longer, say for six years or even for 9 years so that its members may be able to gather the necessary state experience. While in Federal states it must be so made as to give effective representation to the constituent units, in a Unitary state it may be constituted on the basis of vocational representation. In any case it must have same popular authority behind it. It should be accessible to all. It shoul[illegible] no one set of political opinions, a marked and perman[illegible] nance. It should be so constituted that it is able to [illegible] mind and views of the nation as a whole and recognise [illegible] sibility to the people as a whole. It should not be so [illegible] non-serious as the British House of Lords. Its function [illegible]

be merely to check or prevent what the lower house wishes to do. Its proper contribution should be to offer suggestions, make enquiries, attempt improvements on the legislation passed by the lower house, to take active interest in problems of economic developments of a country, and to operate, on the whole, on the plan of a grand Advisory Committee. Its members must be in intimate contact with the local as well as national interests.

THE AMERICAN SENATE

How difficult in practice will it be to achieve a combination of all these factors? Politics is the art of the possible. We simply cannot cry for the moon It is not enough to construct an imaginary outline of an El dorado or a Utopia. No existing Upper House in the whole world satisfies all these canons. There is a Second Chamber like the American Senate which is exceptionally powerful, for it can raise a dike that would restrain the tide. It has been called as the most remarkable of all the inventions of modern Politics. It refuses to bow to the House of Representatives, for it can claim to be fresh from the people and may voice the popular will more accurately. It is elected directly by the people. It can strike out every thing in a Bill after the enacting clause and can insert its own measure. It can increase and reduce taxes and

President; it has developed what is called Senatorial Courtesy "which has become a Liberum Veto", which means that while the

cases, there may have been Presidential victories, but these victories are merely accidental and depend on imponderables—the strength and popularity of the President, the merit of the appointee, the

ther fellow Senators in

ve been time when the

made by the President.

It refused to confirm a nomination of President Truman for the

46, it threatened to veto a few nominations by President Kennedy. From 1868 to 1925, there was no instance of the Senate refusing

to confirm an appointment to the Cabinet. In 1925, it refused to approve a nomination by President Coolidge for the office of the Attorney-General.

The American Senate can also refuse to ratify a treaty made by the President. With a threat to exercise this power, it can dictate material changes in the parts of a treaty disregarding the embarassments to which the administration may be put in relation to other nations. In 1919, it refused to ratify the Treaty of Versailles and insisted on imposing reservations which the President refused to accept. It is a Chamber where debate cannot be curbed and parliamentary obstruction-filibustering is the political sport, for which the season is always open. The Rule of 1917, which pro- [illegible] of the Senators present and voting wanted the end of the debate, thereafter no Senator could speak for more than one hour, did not, in practice achieve much. The reason is that the necessary two-thirds majority has rarely been obtained. It is, of course, true that the Senate filibusters have never killed or seriously delayed important legislation that the country really desired.

This is enough to indicate that the American Senate far from playing a second fiddle to the Lower House can exert a very powerful influence on the American political life. It has been called as the strongest second Chamber in the world, but few will insist that it is an ideal Second Chamber as we attempted to define above.

THE HOUSE OF LORDS

On the other end, there is the British House of Lords, which has been called as the "Westminster Abbey of Living Celebrities". Some have called it as the bastion of reaction or as the fortress of Conservatism. It is hereditary, undemocratic, un-representative, conservative, irresponsible, partial and unusually bulky. Today, its membership is in the region of 900 and it consists of the Princes of the Royal blood, Irish Representative Peers (2, Lords of Appeal in Ordinary (9), Life Peers and Peeresses (under the Life Peerage Act of 1958), Scottish Representative Peers, elected for the duration of a Parliament (16), 2 Archbishops and 24 Bishops (so long as they hold their Sees). In the nature of things, the House of Lords is non-serious; its quorum is only 3 and its normal attendance is not more than 40 or 50. Until 1924, it was exclusively manned by the Conservative and the Liberal parties and even today it is predominantly conservative. In the 18th century, its position was fairly important—it had powers co-equal with those of the House of Commons—it contributed large number of Ministers, its members could easily control and manipulate the elections of the House of Commons. But then, the decline set in; the House of Commons

increasingly became more and more democratic. The 3 Reform Bills passed in the 19th century, and the People's Representation Act in 1918 and the Equal Franchise Act of 1928 made the House of Commons representative of public opinion. The House of Lords continued to be static. Increasingly, it went out of tune with the popular aspirations and current opinions. The rise and growth of political parties and the evolution of the Cabinet tilted the balance in favour of the House of Commons. The government ceased to be responsible to the House of Lords and most of the Ministers were now drawn from the House of Commons. In 1923, when Mr. Bonar Law resigned, King George V passed over the claims of Lord Curzon and appointed Mr. Baldwin on the ground that the Prime Minister should not belong to a House where the main opposition—the Labour was completely unrepresented. Since then, it has become a well-established convention of the British Constitution that the Prime Minister must sit in the
...abour party, utterly dissatisfied
Lords, put on record its resolve
take steps to abolish the House of Lords altogether. The circumstances in which the wings of the House of Lords were clipped to some degree in 1911 are well-known. It was in 1905 and 1906 that the Liberals won the most sweeping electoral victory and were now determined to introduce radical legislation of a social and economic character. On the other hand, the House of Lords encouraged by its success in frustrating the scheme of Mr. Gladstone, and revitalized by the absorption of the Liberal seceders into the conservative ranks was more spirited and even daring than it ever was in half a century. They turned down several liberal measures in 1905-06 and they prevented th
pertied class
a resolution
as expressed
power of the other house to alter or reject bills passed by this House, should be so restricted by law as to secure that within the limits of a single Parliament, the final decisions of the Commons shall prevail". The House of Lords was now clearly placed on the defensive; they tried to evade the issue by tactics of self-reforms

into law the financial provision made by this House for the service of the year is a breach of the Constitution and an unsurpation of the rights of the Commons". In the midst of a serious political controversy which threw the country in the storm of general election twice in the course of a year, the Parliament Act was passed in August 1911, under which Money powers were taken away from the House of Lords and the the supremacy of the House of Commons in financial matters was fully established. In the case of non-money Bills, the House of Lords could delay the passage of a

legislation for not more than two years. In case of a controversy whether a Bill was Money Bill or not, the certificate of the Speaker was to be final.

The Parliament Act of 1911 weakened the House of Lords to a certain extent, but in many important ways, it left untouched its powers. In times of Conservative rule, and in the ordinary course, the House of Lords would use their power of amendment on unimportant details; but when the Liberal or the Labour Government would be in office trying in a determined manner to push through radical social and economic reforms affecting propertied classes, the House of Lords would certainly not hesitate in using the powers still left to it. There would, then, be a conspiracy between the Conservative opposition in the House of Commons and the ranks in the House of Lords. In some cases, the two years veto could easily be turned into an indefinite veto. The request of a Labour Government for the creation of more Peers in the House of Lords in order to enable it to over-rule the opposition of the House of Lords, could be turned down by the Monarch. Prof. Keith insisted that the King in such a situation must act as the guardian of the *Constitution And in case there is a minority government* of labour in office, unsure of Parliamentary support, the House of Lords could easily make a sport of it.

In short, the Parliament Act of 1911 only applied a brake on the Lords' ambitions which were running riot at that time. It announced the intention of the authors in the preamble to "substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular *instead of a hereditary basis." Since then* continuous efforts notable in the conference presided over by Lord Bryce in 1918, the Peer Resolution of 1922 and the Conference of Party Leaders in 1948 have been made to devise a means of constitutional reform which would improve the efficiency of the House of Lords by a comprehensive broadening of its membership, without either depreciating the value of its work, or creating rivalry with the House of Commons. *In 1948, another Parliament Act* was passed which reduced the delaying powers of the Lords from 2 years to one. In 1958, the Life Peerages Act was passed which *enabled the Queen on the advice of the Prime Minister, to grant* peerage for life, in addition to those which have, since 1876 been [illegible]

do not receive a salary as members of the House of Lords, and are eligible for only limited expenses if they attended its meeting, it has been felt that the size of the nominal membership of the House in relation to its effective working membership is somewhat anomalous. By Standing Orders, promulgated by the House in June 1958, peers are now asked, at the beginning of each Parliament, *whether they will attend the sittings of the House as often* as they reasonably can or whether they desire to be relieved of the obligation of attendance. If they do so desire, they are required

to apply for leave of absence, either for the duration of the Parliament or for shorter period, during which they are not expected to attend the House.[1]

POWERS AND FUNCTIONS OF THE LORDS

The present powers and functions of the House of Lords can be said to be judicial, legislative and deliberative. The judicial functions have lost all importance. In the sphere of legislation, it can only dot the i's and cross the t's and be happy with it; it can, to a certain extent, relieve the congestion of the House of Commons. Legislation of an intricate, but non-financial nature, for example, is frequently introduced, and fully discussed in the House of Lords before being sent to the Commons, which can then deal with it more speedily. Both the content and the form of legislation introduced in the House of Commons is sometimes revised and improved by amendments passed in the House of Lords; and the House of Lords bears equal responsibility with the House of Commons for Private Bill legislation. In general, proceedings in the House of Lords impose a second stage on the legislative process, which is supposed to give time for reflection, and is, in itself, worth while for eliciting new points of views.

The House of Lords also provides a place in Parliament for persons whose counsel is useful to the State, but who do not wish to immerse themselves in party politics. Its rules of procedure are very flexible and this, together with the fact that Members are not dependent for their seats on party support and the popular vote, makes possible the full and frank expression of individual views.

1 The organisation of the House of Lords is as follows:

The House of Lords is presided over by the Lord Chancellor, who is the Speaker of the House and who is assisted by a Lord Chairman of Committees. The powers of the Lord Chancellor in the conduct of proceedings in the House are not as great as those of the Speaker of the House of Commons and, as an important member of the Government, the Lord Chancellor frequently takes an active part in debates (although he addresses the House, on such occasions, away from the seat known as the Woolsack, on which he sits as Speaker).

The Lord Chairman of Committee is appointed each session; he takes the chair in all committees unless the House otherwise directs; he is also the first of the Deputy Speakers of the House. He is assisted by his Counsel, who advises him on legal questions.

The permanent officers include the Clerk of the Parliaments, who is charged with keeping the records of proceedings and judgments, who pronounces the words of the Royal Assent to Bills and who advises Members of the House on procedure; the Clerk Assistant who keeps the minutes of proceedings and prepares the order paper for future business; the Reading Clerk; The Gentleman Usher of the Black Rod, who enforces the order of the House; and the Sergeant- [illegible] who attends the Lord Chancellor.

But these functions and powers do not bring the House of Lords to the position of an ideal Second Chamber—it continues to be reactionary, irritating and a strong-hold of Aristocracy. The Labour party thinks that its powers are too many; the Conservatives imagine that its powers are too few. Its mode of composition continues to be utterly unsatisfactory and its size continues to be irksome. There is hardly any improvement in its sense of responsibility. Although it contains a number of able [illegible] what they are glad to see defended, there can be no gainsaying the fact that today, it suvives not because of any intrinsic merits, not because of any force of tradition, but because of other factors. It survives partly because it has become ineffective to a great extent, partly because no non-conservative government has yet come into existence with sufficiently strong majority to do away with it. The difficulties of the reform are enormous. We may conclude with the observation made by Professor Finer : "There are conservatives who see the need for reform. Some demand the strengthening of the power of the House, but that would certainly invite its abolition. Others seek to alter its composition, so that in the future it will be able to justify its power by popular elements. If we treat the Conservative idea of a 2nd Chamber as impossible nowadays, there is hardly a halt to abolition, for, reform of the composition of the existing House is impossible. It is this House by sheer inertia, or none at all by abolition, for almost every plan suggested since 1911 is impracticable."

It is, thus clear, that the House of Lords cannot be said to be an ideal Second Chamber by any means or manner.

THE INDIAN COUNCIL OF STATES

The Indian Council of States owes its origin to the Government of India Act of 1919. Before that, the Indian Legislature was merely an extension of the Executive because the Governor-General-in-Council virtually acted boith as the Legislature and the Executive. In the Montagu Chelmsford Report, it was pointed out that "we do not propose to institute a complete Bicameral system but to create a Second Chamber, known as the Council of States, which shall take its part in ordinary legislative business anc [illegible] in matters which the C [illegible] oint Select Committee t [illegible] e claim and afforded an [illegible] the Government of India Act of 1919 and which, with minor changes, continued in the Act of 1935. In the Constituent Assembly, a bicameral system of Legislature was taken for granted as, by that time, a

1 Para 227.

federation for India had developed into a mature idea which found acceptance of most of the leaders. As finally provided in the Indian Constitution, the Indian Council of States (the Rajya Sabha) does not represent the constituent units of the Indian Union on the basis of equality. Indeed in practice, except for one or two clauses in the Constitution, the Council of States cannot be said to be a federal instrument. The reasons for not providing equal representation to the Units in the Rajya Sabha were twofold; (*a*) it was argued that equal representation would be unfair to the bigger and more important states. The size and population of the different States, the level of their political consciousness, the growth of their economy, differed considerably. Moreover, when the Constitution was framed the boundaries of different States could not be said to be final. The Congress Government was committed to the principle of linguistic redivision of States. The best course appeared to be that the seats in the Rajya Sabha must be allocated on the basis of the population of different states; (*b*) it was contended that those grounds on which equal representation of the units in the Upper House rested in the United States and Australia did not exist in India. In the United States of America, the Federation evolved from the bottom; in India it came from the top. Nevertheless under Article 249 of the Indian Constitution, it was provided that if the Council of States has declared by resolution, supported by not less than two thirds of the members present and voting, that it is necessary or expedient for the national interest that Parliament should make law with respect to any matter enumerated in the State List, specified in the resolution, it shall be lawful for Parliament to make Laws for the whole or any part of the territory of India with respect to that matter, while the resolution remains in force. A resolution passed in this manner, shall remain in force for such period not extending one year as may be specified therein. In this sense, the consent of the Council of States is taken to imply the consent of the constituent States.

The Council of States is limited in size to 250 members. It is not a hereditary body. Twelve of the members are nominated by the President to represent special knowledge or practical experience in respect of such matters as literature, science, art and social service, not more than 238 members represent the States and they are elected by the elected members of the Legislative Assemblies of the States in accordance with the system of Proportional Representation by means of the single Transferable Vote. The representatives of the Union territories shall be chosen in such manner as Parliament may, by law, prescribe. The Council of States cannot be dissolved but as nearly as possible, one third of the members retire as soon as may be, on the expiration of every second year in accordance with the provisions made in that behalf by Parliament. Those that retire out, may, of course, be re-elected. A person who is less than 30 years of age, who holds any office of profit under the Government of India or the Government of any State, who is of unsound mind, who is an undischarged insolvent

and who is not a citizen of India, is not qualified to be elected to the Rajya Sabha. The Vice-President of India presides over the Council and when he is absent, a Deputy Chairman, chosen from among the members of the Council, presides.

The Council of States has legislative, financial judicial and miscellaneous functions. In matters of ordinary laws., it has more or less the same power as are enjoyed by the House of the People in India. These Bills may be initiated in either House of the Parliament. This provision has practical advantages. If all Bills were to be first introduced in the Lower House, the Upper House would have no legislative work to do during the first part of the session and would be over-burdened with work during the second part. If a fair number of Bills are first introduced in the Upper House, it will keep it occupied throughout the session and at the same time save much of the precious time of the Lower House, which often has other important business to attend. All these Bills must be passed by both the Houses. If a Bill is not passed in identical form by both the Houses, or is rejected by one House, or is delayed for more than six months, the President may summon a joint sitting under Article 108 of the Constitution. In a Joint Session, however, the Lower House, having double strength of the Upper House, will always dominate. In actual practice, therefore, the Council of States has no more than a delaying power of six months as far as ordinary Bills are concerned. Sometimes, of course, it may happen that in a Joint Session, the members of the Council of States may be able to influence the members of the House of the People. The only occasion when a joint Session was called, was on May 6, 1961 when the two Houses met together in order to reconcile their differences on the famous Dowry Prohibition Bill. This bill was first passed by the Lok Sabha on December 9, 1955. The Council of States adopted the Bill with three amendments on December 16, 1959. The House of the People did not agree to these amendments, which were discussed by it in March, 1960. The Council of States, however, insisted on its amendments. In the Joint Session, the Bill was passed. With regard to Money Bills, the position of the Indian Council of States is very much similar to that of the British House of Lords. Article 109 of the Indian Constitution provides that after a Money Bill is passed by the Lower House, it must be transmitted to the Upper House, which may make recommendation within 14 days and this may or may not be accepted by the Lower House. In any case, the Bill does not have to go again to the Council of States. It is passed by the House of the People and submitted to the President for assent. In case a Money Bill is not returned to the House of the People within a period of 14 days the Bill is deemed to have been passed by both the Houses at the expiry of the period in the form in which it was trasmitted to the Council of States. This procedure resembles the procedure of the British Parliament Act of 1911. The definition of a Money Bill is given in Article 110 of the Constitution, but it is provided that if any question arises whether a Bill is a

Money Bill or not, the decision of the Speaker of the House of the People will be final. Thus, with regard to a Money Bill, the initiative from beginning to the end rests in the hands of the House of the People. It is true that the Annual Budget is presented to both the Houses and the Council of States has a right to have a general discussion on the Budget. The Council has also claimed a right to discuss the reports of the Comptroller and Auditor-General. It has also been associated with the Public Accounts Committee with effect from May, 1954, when a Motion was adopted that the Committee will have all the members of the Council of States having the same status as the representative of the Lower House. The Committee, however, remains a Committee of the Lower House and all its members are under the general control of the Speaker.

The Council has also been given the power, along with the House of the People, to present an Address to the President for the removal of a Judge of the Supreme Court and High Courts, the Comptroller and Auditor-General and the Chief Election Commissioner. The Council enjoys equal powers with the House [illegible] Emer- [illegible] become [illegible] House [illegible] this is purely an academic question, and does not deserve further investigation in this work. It is also associated in the election of the President and the Vice-President of India. It is free to make rules for regulating its procedure and the conduct of its business. The rules of procedures for the Joint Sittings of the two Houses are made by the President after consultation with the Chairman [illegible]

The Council cannot exercise any effective control over the Executive. The members of the Council cannot move Adjournment Motion in order to raise question of urgent public importance. The Government have voluntarily consented to answer questions put by the members [illegible] affairs of t[illegible] ted Motio[illegible] tant questions.

The relations of the Council with the House of the People have, on the whole, been cordial, although, there have been a few clashes. One such clash occurred in 1953 when Mr. C. C. Biswas, the Union Law Minister and the Leader of the Council, during the course of a discussion on the Income Tax Amendment Bill, 1952 (which was certified as a Money Bill by the Speaker), expressed an opinion that the Council would be reassured if it were told categorically that the Speaker had applied his mind to this question and that he has issued the certificate after a full and fair consideration. To this remark, the House of the People took

exception and desired him to be present to explain this matter. The Council of States, at the other end, moved a Motion asking its leader not to go to the Lower House. The House of the People insisted on its right of controlling the members of the Cabinet and demanded his presence. Mr. Biswas appeared before the House, but did not speak. Neither the Speaker of the Lok Sabha nor the Chairman of the Council of States expressed any opinion on the matter. The incident was closed on May 6, 1953, when the Prime Minister came back to Delhi, and he made a statement, in which he said: "Under our Constitution, Parliament consists of two Houses, each functioning in the allotted sphere laid down in that Constitution. We derive authority from that Constitution. Sometimes we refer back to the practice and conventions prevailing in the Houses of Parliament of the United Kingdom and even refer erroneously to an Upper House and a Lower House. I do not think that is correct. Nor it is helpful always to refer back to the procedure of the British Parliament which has grown up in the course of several hundred years and as a result of conflicts originally with the authority of the King and later between the Commons and the Lords. We have no such history behind us, though in making our Constitution we have profited by the experience which has clearly specified the functions of the Council of States and the House of the People. To call either of these Houses an Upper House or a Lower House is not correct. Each House has full authority to regulate its own procedure within the limits of the Constitution. Neither House, by itself, constitutes Parliament. It is the two Houses together that are the Parliament of India. The successful working of our Constitution, as of any democratic structure demands the closest cooperation between the two Houses. They are in fact parts of the same structure and any lack of that spirit of cooperation and accommodation would lead to difficulties and come in the way of the proper functioning of our Constitution. It is, therefore, peculiarly to be regretted that any sense of conflict should arise between the two Houses. For those who are interested in the success of the great experiment in nation-building that we have embarked upon, it is a paramount duty to bring about this close cooperation and respect for each other. There can be no constitutional differences between the two Houses, because the final authority is the Constitution itself. That Constitution treats the two Houses equally, except in certain financial matters which are to be the sole purview of the House of the People. In regard to what these are, the Speaker is the final authority."

What, then, is the role of the Council of States in the Indian Parliament? It has been called as one of the weakest Second Chambers in the world. It cannot control the Executive; it cannot make any material difference in legislation: it cannot assert itself in a joint sitting; it has no power in Money Bill; most of the Ministers do not sit in it; it cannot function as a delaying or revising Chamber; it cannot claim to be fully representative of public opinion. There does not seem to be much difference in

age, experience, background and outlook between the members of the two Houses in India. "Composed of men similar to those who sit in the House of the People, the Council has not surprisingly failed to evolve a distinct role for itself". In fact, the main architect of the Indian Constitution, Dr. Ambedkar had expressed his doubts about the utility of the Council in the Constituent Assembly. On one occasion he is on record to have said: "I cannot say that I am strongly pre-possessed in favour of a Second Chamber. To me, it is like the Curate's Egg—good only in parts. It had been called as one of the ornamental parts of the Constitution". With all these weaknesses, however, the Council of States has played a significant role, (not a role based on power) in the working of the Indian Parliamentary system. It has initiated important Bills. Between 1952-1957, the Rajya Sabha dealt with 363 Bills, of which 201 originated in that House. Most of these Bills were of a social character. The debates and discussions in the Council have usually been of a high order and speeches made by its members have been heard with respect. Persons like Dr. Ambedkar, Dr. H. N. Kunzru and Mr. P. N. Sapru have always been looked upon with great respect. The Council has played an important role in the sphere of private Members Bills. It has functioned quite effectively even with regard to the revision of Bills. Between 1952-1957 it made amendments in 14 Bills passed by the Lok Sabha and in all the cases, the Lok Sabha accepted the amendments. One Money Bill, namely. The Travancore-Cochin Appropriation Bill, 1956, was returned by the Rajya Sabha to the Lok Sabha with a recommendation for an amendment of a technical nature, which was accepted by the Lok Sabha. In the sphere of questions as early as May 1952, provision had been made in the rules of procedure only for two question days in a week. On a demand made by all sections of the Council that the number of question days be increased, the Chairman referred the matter to the Rules Committee and the Committee recommended that the Question Day should be extended to 4 days in the week and that the first hour of the stitting on [illegible] -sday and Thursday should be [illegible] answering of questions. This [illegible] he Chairman and incorporated in the Rules. Between 1952-57, the Rajya Sabha gave notice of 22,793 questions. During this period, 17 Government Motions were discussed, relating to various National and International questions and 7 Private Members Motions were also discussed. Twenty government Resolutions were moved and passed in the Council; several members of the Council took an active part in the deliberations of the Special Parliamentary Committee set up to consider the Second Five Year Plan.

[illegible]

of one or more All-India Services, common to the Union and the States, if the Rajya Sabha has declared by a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest to do so. Thus, in the matter of Central intervention in the State legislative field the Constitution has assigned a special position to the Rajya Sabha and this is due to the fact that the Rajya Sabha is composed of representatives of the States and the adoption by the Rajya Sabha of the resolution referred to above with two-thirds majority would be tantamount to the giving of consent by the States. The two-thirds majority has been prescribed as there is no equality of representation of the States in the Rajya Sabha.

Besides, the Council of States has equal powers in the sphere of amendment of the Constitution. Under Article 368, no amendment Bill can go into force unless it has been approved by the Council. Finally, it may also be said that there may be occasions when the ruling party in the Lok Sabha may not be in a majority in all the States and the Union territories. In such a case the Council will have sizeable opposition party which is so essential for the proper functioning of democratic legislature. The term of office of the members of the Rajya Sabha is longer than that of the members of the Lok Sabha and one-third of the members of the Rajya Sabha retire every second year. The contingency that the ruling Party in the Lok Sabha may be in a minority in the Rajya Sabha, although very remote, cannot be altogether ruled out. Even if such contingency arises, the Council would operate as a device of checks and balances in the legislative machine.

OTHER SECOND CHAMBERS

The Upper Chamber in Canada is called as the Senate. Although it was endowed with comprehensive legal powers co-equal with the Commons, it was intended to be a minor legislative partner. All Money Bills in Canada can originate only in the House of Commons. It is to this House that the Cabinet is responsible. While the members of the House of Commons are elected on the basis of adult Suffrage, the Senators are appointed by the Governor-General-in-Council and they hold office for life. In the nature of things, therefore, the balance is tilted in favour of the lower House. The framers of the Constitution, however, wanted the Senate to serve as an instrument of protection of the interests of the provinces. Although, the small provinces were not allocated the same number of seats in the Senate as the two large provinces, they had nevertheless a much greater representation proportionally than in the Lower House. The Senate was also intended to act as a revising and restraining body to check the possible errors or impulses of the House of Commons. To a certain extent, the Senate was expected to represent property and the forces of stability so that it may protect the people against themselves and against the encroachment of power.

The total strength of the Canadian Senate is 102, although in certain conditions it can be increased to 106 or even 110. The purpose of this flexibility is to provide an opportunity to break a possible deadlock if a serious disagreement should arise between the two Houses. The Senators represent their respective provinces and they must be residents of the provinces they represent.[1] A Senator must be 30 years of age, must be a British subject, must own real or personal property within the province he represents of net value of four thousand Dollars and must not be otherwise disqualified. The Speaker of the Senate is appointed by the Governor-General-in-Council.

Although in theory the powers of the Senate are more or less similar to those of the House of Commons, in actual practice, the Senate has relegated in the background and has ceased to play an effective role in the working of the Constitution. Ministers
ns and there
the Sessions,
has to take a
holiday or long adjournment after the Address in reply to the Speech from the Throne. After a Bill is passed by the Commons, one of the Standing Committees of the Senate puts it to a detailed examination. The Senate has as many as 6 Standing Committees and they function on days when it is not in Session. As in Australia the Bills are usually badly drafted and hastily assembled. The Senate can perform a useful function as a revising Chamber partly because it has more leisure and fewer distractions than the House of Commons. It can also perform a valuable service in amending and delaying the passage of measures that might result from sudden shift in public opinion or party strength. But it must be emphasised that adequate consideration of Bills is often rendered impossible by their late arrival from the Lower House. In fact, most of the Bills come to the Senate in the dying days of the Session. Theoretically the Senate can turn down a measure passed by the House of Commons. But in actual practice, the Senate always yields before the wishes of the Commons. At times, the Senate has insisted on its amendments even in the case of the Money Bills. In such

1

Ontario sends	24
Qubec	24
Novascotia	10
New Brunswick	10
Prince Edward Island	4
Manitoba	6
British Columbia	6
Alberta	6
Sascatchewan	6
New Foundland	6
Total	102

cases the House of Commons has accepted the amendments "but has added the quite futile proviso that they were not to be considered as constituting a precedent."

There are many factors which have made the Canadian Senate really a Secondary Chamber. In the first place, as we stated earlier, the Senators are nominated by the Governor-General-in-Council on the recommendation of the Prime Minister. The result of this is that "senatorships have been regarded as the choicest plums in the patronage basket and they have been used without compunction as rewards for favourable party service". As one authority has put it, the Senate has become the refuge and reward of old party servants, each party filling up the vacancies of death with its friends and rarely on the basis of ability. As the Senate criticises but does not seriously interfere, the Canadian people generally regard it with amusement, tolerance or contempt and while governments have frequently promised to reform it, nothing is done in practice "The genial old genltemen who populate the snug red velvet Chamber live on undisturbed, meeting for a few weeks in the year, bumbling and grumbling at the government, making a few good speeches and drawing annual indemnity for less work than any other citizen of Canada."

[illegible]

by political pulls and the fear of electoral defeat. In practice, however, the Senate has belied the expectations of the framers of the Constitution. Those people usually sit on its benches who have become practically useless for any other job. No one goes to the Senate with an eye to a future career and practically every Senator goes there with the sense of opening up the last chapter of his life. Even the British House of Lords can claim to be younger than the Canadian Senate which has become a shelter of the aged. "In Canada a Senatorship is not a job; it is a title also, it is a blessing, a stroke of good fate; something like drawing a Royal straight flush in the biggest pot of the evening, or welling the Calcutta sweep. That is why we think it wrong to think of a senatorship as a job; and wrong to think of the Senate as a place where people are supposed to work. Pensions are'nt given for work."

Again the Senators have no incentive for work. Their political ambition is virtually dead; their needs for the future are guaranteed, and with an ample salary they have developed a general sense of futility. Few people listen to their speeches, in which there is hardly any drama or excitement. Its votes cannot decide any vital issues; it does not provide any stimulant; it neither makes nor mars anybody's reputation. "It rests on no political foundation; it can look nowhere for support or justification save in the essential rectitude or excellence of its own acts which is rarely sufficiently impressive to carry much weight." It has [illegible] amount of work. Its members cannot play any effective role

party meetings. They are not represented in the Cabinet except by one Minister, who generally has no portfolio. The result is that no government Bill can be introduced there and information cannot be readily obtained from the government. The only useful function which it can be said to perform, is that sometimes its investigations have been of some merit and that it has been able to take on itself the greater part of the load of Private Bill legislation from the over-worked House of Commons. If it exists in Canada, it just exists because parties do not agree on any scheme of reform and because it is always convenient to the majority party.

THE AUSTRALIAN SENATE

The Australian Senate comprises of 60 members (10 for each state voting as one electorate) chosen for 5 years by the same adult suffrage as are representatives. Every Senator (or member of the House of Representatives) must be a British subject, be of full age, possess electoral qualifications and have resided for 3 years in Australia. Voting is compulsory (since 1925). The makers of the Australian Constitution had in view the constitution of the Upper House of the Australian Colonies, the rule of British House of Lords, and the model of the American Senate. The Conservaties among them wanted to have an Upper House which would constitute a bulwark for property and the established social order. In making the Senate popularly elected, they were anticipating the 17th Amendment of the United States. The Australian Senate, however, is not even a shadow of its American counterpart. Each Senator is under the thumb of the party. The electorate being vast, the party machine is complete master of the situation. Outstanding personalities prefer to go to the House of Representatives. Bills reach the Senate in the closing stage of the Session so that its members have no chance, even if they have the inclination, to examine a Bill. In the early part of a Session, it has no work and occasionally adjourns for want of business. Most Senators accept their lot quietly and prefer to rest rather than be active. The term of the House is three years, while that of the Senate is 6 years, one-half of the members to be renewed every three years. This has the effect of weakening the authority of the Senate quite considerably. Whereas after a general election, the majority in the House of Representatives has a single new mandate for its declared policy, only half of the Senate has been to the people. Consequently a Senate majority party made up of Senators who have already served half their term, can claim no valid up-to-date mandate to obstruct the measures of the new House of Representatives majority.[1] The truth is that inspite of its direct election, the Senate is at any given time, out of tune with popular will and current opinions, while there is never any point of time at which the Lower House has not twice as good a claim to represent the

1 L.F. Crisp. *The Parliamentary Government of the Commonwealth of Australia*. pp. 180-181.

people as the Senate h
and the Senate under
in respect of these bills. A Money Bill, must, of course, be passed by both Houses. In practice, the party system has made this power nominal and the Caucus can discipline any member of any party. The Senate cannot initiate any proposal for the amendment of the Constitution. The government, if it faces any hostility in the Senate, can always recommend dissolution of the Parliament, which, in Australia, is Double Dissolution. In case of prolonged disagreement between the two Houses, both the Senate as well as the House are dissolved, and then an entirely new Senate is elected. Deadlocks between the two Houses are usually resolved by extra-constitutional inter-House Conferences, failing which Double Dissolution is inevitable. All efforts designed to bolster up the Senate have been frustrated. Nothing indicates the hollowness of a Senator's position and status so much as the system of filling casual vacancies in that House. The man chosen is indirectly elected by a joint sitting of the two houses of the parliament of the State where the vacancy occurs if it is in session, or may be appointed until the next session by the Governor-in-Council if it is not sitting. In short, the Australian Senate cannot effectively revise bills passed by the House; it does not initiate much legislation, it does not and cannot delay the passage of a bill; and the quality of its debates is never very high. It has been a complete failure as a chamber of review, as a check on hasty legislation, or as the originator of statesmanlike measures of national utility.

THE SWISS COUNCIL OF STATES

In Switzerland, the Upper House is called as the Council of States which consists of 44 members, two each from 19 Cantons and one each from six half-Cantons. Each Canton determines by its own laws, the manner in which its Deputies are to be elected, the term that they will have and the allowances that will be paid to them. The Council meets once a year in Ordinary Session on a day fixed by standing order. Extraordinary meetings can be called by the Federal Council, or on the request of one-fourth of the Deputies, or of five Cantons. It elects its own Chairman and Vice-Chairman for each Session and the Chairman determines the daily order of business to be conducted by the House. In case of a tie, the Chairman has a Casting vote, which he exercises according to the established conventions of the House. An absolute majority of the total membership constitutes the quorum and all questions are decided by an absolute majority of those voting. Members vote without instructions from their respective Cantons.

Originally, the Swiss Council of States was devised as a protection against the possible tyranny of the majority and in the beginning it played a fairly important role. With the march of

however, the lower House began to attract ability and, therefore, power. The average age of the members of the Council is about 60 years. The Council has no special powers such as those given to the American Senate. The term of representation of some Cantons is rather short—in 14 Cantons it is 4 years, in 8 Cantons, it is 3 years and in 3 Cantons it is only one year. Most of the people, therefore, prefer to be in the lower House. The powers of the two Houses in Switzerland are absolutely equal—even in financial matters. Nevertheless deadlocks between the two Houses have been extremely rare and the relations between them have been quite happy. A conflict between them can be resolved by a joint sitting. At all joint sittings, the President of the National Council takes the Chair; decisions are taken by simple majority and among those voting. National Councillors, being more numerous, have the predominant power.

THE FRENCH SENATE

In France, the Upper House is called as the Senate, consisting of all the members of the former Council of Republic. Under Article 91, "Until its definitive constitution, the Senate shall consist of the present members of the Council of the Republic. The organic laws that shall determine the definitive constitutions of the Senate must be passed before July, 31, 1959." The Premier is entitled to ask the Senate for "approval of a declaration of general policy." But a motion of censure necessitating the resignation of the Government can only be adopted by the lower house. The Senate is no longer the great Senate once contemplated. The name of the Council of Republic is dropped and in other aspects the Upper House of France recalls that of the Third Republic after which it is christened. In its composition resting on the basis of indirect suffrage, the representation of certain social categories is emphasised at the expense of that of other categories. The Senate [illegible] xamine the law- [illegible] hich is the main [illegible] It has a hand in [illegible] and its President has the right to appoint 3 members to the all-powerful Constitutional Council. The privileges of the Senators are similar to those of the deputies and the sessions of the Senate are coterminous with the sessions of the National Assembly. The Senate is not subject to dissolution. But it is the National Assembly which is the centre of gravity. The French Senate is not even the shadow of the American Senate. In respect of its prestige and authority it is likely to be a much lesser body than even the Indian Council of State which can at least function to some extent as an instrument of safeguarding the interests of states and at times as an agency to strengthen the centre. It cannot hold up a bill for good; it cannot drive out the government from office; it has virtually no control over finance, and it cannot initiate money bills. It has no hand in

executive appointments. In short, the Senate in the Fifth Republic of France is hardly more than a false window in the Constitutional facade.

THE LAGTING OF NORWAY

The most interesting of all the Second Chambers in existence is Lagting of Norway. At its first meeting after each quadrennial election, the Norwegian Parliament—Storting, proceeds to select one-fourth of its members (38) to constitute the Lagting, with the remaining members (112) constituting the Odelsting. This procedure, to be sure, gives the Storting to some extent at least the appearance of bi-cameralism. One way of looking at this is to [illegible]

ism," The qualifications, methods of election and length of term are the same for entire membership and it is only after the Storting has come from the voters without designation to either section that the Storting itself makes a division into two groups. The Storting is summoned and prorogued as a single body and it constitutes its committees as such. The Lagting and the Odelsting meet separately, the former acting as a revising Chamber for bills. The Storting transacts other business. Both the Lagting and the Odelsting have their separate organisation and ordinary laws must be considered in both of them. But a bill can become a law if it is passed by the Storting even though it fails to pass in Lagting or in Odelsting. In dealing with revenues and other money matters, the Storting acts as one body.

To be eligible for the membership of the Storting, one must be of 25 years of age. The Storting meets regularly on the first week day after the 10th of January each year, but the Government may call special Session. Under Article 76 of the Norwegian Constitution "each bill shall first be introduced in the Odelsting, either by one of its own members or by the Government through a member of the Council of State (the ministry). If the bill is [illegible]

bill or again sends it to the Lagting, with or without alteration. When a bill from the Odelsting has twice been laid before the Lagting and has been a second time rejected by it, the whole Storting shall meet in a joint sitting, and the bill is then disposed of by a majority of two-thirds of the votes. Between each of these deliberations there shall be an interval of at least three days." When a bill passed by the Odelsting has been approved by the Lagting or by the Storting in joint sitting it is sent to the King for his approval. A bill refused sanction by the king becomes a law without his signature if passed by three successive Stortin with elections intervening. As the king's veto power has now f

into complete disuse the constitutional provisions relating to i have little importance in a realistic picture of Norwegian government. Budgetary legislation is handled by the Storting in plenum. All taxation provisions are constitutionally valid only for one year so that the budget bill comes up annually (the fiscal year begins on July first). Formerly the task of considering the revenues and appropriations was scattered among several committees, but the handling of the budget bill is now largely centralized in the hands of the committee on finance and customs. As above noted, budgetary legislation is finally passed by the entire Storting by a majority vote.

There has been some controversy as to whether Norwegian Parliament is unicameral or bi-cameral. The best reply to this is that Norway has One-House Legislature with the rudiments of a bi-cameral system, as has been observed by Professor Lee Smith. The method of election of proportionate number of members of the Second Chamber by the first Chamber is employed by some of the unitary states and also in some constituent units of federal states. But the system followed in Norway is unique.

THE SOVIET OF NATIONALITIES

In the U.S.S.R., the Upper House is called as the Soviet of Nationalities, consisting of about 650 members, 25 members from each Union Republic, 11 from each Autonomous Republic, 5 from each Autonomous Region and one from each National Area. Thus, extra weight is given to the smaller units. The term of both the Houses is 4 years; sittings of the two Houses begin and end simultaneously, they are held twice a year and usually last ... lections at the first meeting, the ... ey elect an Executive Committee ... ts as the collective head of the state ... when the Supreme Soviet is not sitting. The powers of the two Houses are equal and decisions require a simple majority in both, or a two-third majority in both if it is proposed to amend the Constitution. In case of disagreement they appoir ... promise and then ... If the disagreemei ... both Houses and hold new elections. These provisions have actually never been used because all proposals have been passed ...

... cameralism would not make much of a difference. The sessions of the Supreme Soviet are very short and the real leadership is in

the hands of the Presidium, which means the top ranks of the Communist Party of the Soviet Union. The Soviet Legislature is an Assembly of notables where the membership is a reward for party loyalty. The proceedings are usually perfunctory; the atmosphere is that of a Mela; the members listen, applaud and approve. The role of the Legislature, therefore, cannot be said to be political. It is merely a registering or ratifying body; it does not and cannot initiate policies but confirms them. It does not propose but considers the issues which have already been resolved by the party. In essence it is merely a rubber-stamp. It coordinates party work and educates non-party men in the legislature In theory of course, it is the highest organ of state power and no law is deemed to have passed unless it is adopted separately in each House by majority votes. But in actual practice, the real powers are exercised by the leaders of the Communist Party in the Soviet Union.

It is, thus obvious that none of the existing Second Chambers really satisfies the standards of an ideal Second Chamber. It is for this reason that most of the existing Upper Houses are subject to controversy among the political elements of a country. There are countries where the Seeond Chamber has been armed with powers equal to those of the Popular Chambers even in matters of finance—for example Sweden, Belgium and Italy. In Sweden, a bill is to be introduced simultaneously in both the Chambers. Like the Canadian Senate, the Australian Senate has also powers coordinate with those of the Popular Chamber (except in the case of money bills). In Parliamentary democracies, the usual practice is to exclude matters of finance from the powers of the Upper Houses. But, in any case, almost all the Second Chambers tend to be unedmocratic, conservative and unpopular. The arguments for bi-cameralism put forward by J. S. Mill, Henry Sidgwick, Mr. Churchill and Sir Henry Maine are now out-moded.[1] Nevertheless in most countries in the world Second Chambers do exist.

THE CONSTITUTION AND POWERS OF THE UPPER CHAMBERS

An Upper Chamber like that in Britain, as we have already seen, is based on the principle of heredity. It has, therefore,

1 Sidwick said : "the main end for which a Senate is constructed is that all legislative measures may receive a second consideration by a body different in character from the primary representative assembly, and if possible superior or supplementary in intellectual qualifications." According to Sir Hnery Maine, "almost any sort of Second Chamber is better than none."

According to Churchill: "No free country, enjoying democratic institutions that I know of has adopted Single chamber Government..... All feel that between the chance vote of an election on universal suffrage the permanent alteration of the whole slowly built structure of the state and nation, there ought to be some modifying process. Show me a powerful, successful, free democratic Constitution of a great sovereign state, which has adopted the Principle of Single Chamber Government."

become the repository of aristocracy and vested interests. Secondly, there are those Upper Houses where the members are nominated by the government as in Canada. They may be appointed either for a specified term or for life. In actual practice, such Upper Houses will always be partial to the government. The Newzealand Constitutional Reforms Committee in its report submitted in 1952, recommended the nomination of Senators by the party leaders in proportion to party strength in the Popular House. It is clear that even if this method is adopted, the Second Chamber will merely be a replica of the first. Thirdly, in some states the Upper House is elected directly by the people as in the United States of America. Under this system the Upper House may easily become a rival of the Lower House, which is also elected on the same basis, or it may become an unnecessary duplication of the Lower House. It may also be possible that persons with high intellectual merit will rather refrain from entering into controversy of an election and thereby the Upper Chamber will be deprived of expert knowledge and valuable experience. In Australia also the Senate is directly elected but its quality is not of a very high order. Both here as well as in the United States of America bigger constituencies and a different system of voting for the Senates has been provided so that the Second Chamber may not be a duplication of the first. In Italy, the elections are held in different regions into which the state is divided for the purpose of such elections, but not on the basis of equality of representation to the regions, and a different system of voting is also followed at such elections. In Japan, the Upper House, *i.e.*, the House of Councillors, is also directly elected by the people for a term of six years, half the members retiring every three years But here again, ambitious politicians have not been attracted in the Upper House. Fourthly, there may be Upper Houses which are partly elected and partly nominated, as the Second Chambers in the Provinces under the Government of India Act of 1935. This is a compromise which achieves no useful purpose. In most of the federal states, the mode of appointment of the Upper House [illegible]

[illegible] number was not to extend one-sixth of the total number of members of the Council of the Republics. In the Union of South Africa, the electoral body consists of the representatives of the provinces in the House of Assembly of the Union. In some of the unitary states the method of election by the local bodies is followed, as in the Netherlands, and Portugal. In Switzerland, the members of the Upper House are elected by the Cantonal Legislatures. In India, the Council of States is elected by the elected members of the Legislative Assemblies of the States. In Ireland, the principle of distribution of seats on a functional basis has been adopted. In most of the cases, elections to the Second chamber

are held in accordance with the system of Proportional Representation by single transferable vote in order to enable all political parties to get an equitable share of representation in the Upper House. In many cases a few members to the Upper House are nominated by the executive in order to provide representation to those who might have rendered distinguished service to the community or might have gained experience in different walks of life. But it must be borne in mind that every mode of appointment has its own defects and nowhere have the results obtained, given complete satisfaction. In general, it may be said that if an Upper House is to render any useful service, it must be constituted differently from the Lower House. The best course seems to be to combine the principle of direct and indirect elections so that the Upper House may be neither entirely undemocratic nor a mere carbon copy of the Lower House. Since in every society persons of outstanding ability will not contest elections, there must be provision for nomination on the basis of merit. It must be remembered that a Legislative Assembly, whether it is a Lower House or an Upper House, should not consist of unusually extraordinary or eccentric people but of people who shares the ideas and prejudices, the aspirations and the ambitions of the ordinary electors. The prir ciple of nomination to an Upper House has one [illegible] on nominate him to the Upper House. Even if seat for him is to be found in the Lower House, the Prime Minister will have to find out a member of the Lower House holding a safe seat, who is willing to resign, and who may be sent up to the Upper House by nomination. In plural societies, the Upper House can be so constituted, as to give representation to several communities. In Federal states an important aspect of the problem of the constitution of the Upper House is the question of allocation of seats to the constituent units. In the United States of America, and Australia, the units are represented on the basis of equality. In India, Switzerland and Canada, the units are represented on the basis of population and size of the different states. The principle of equality of representation is disadvantageous to the bigger and more important states. It had to be accepted in the United States of America and Australia, because in both countries, the federal union was formed as a result of agreement between the constituent units, which were sovereign and independent states. It became necessary to satisfy the centrifugal sentiments of such states by giving them equal representation. In a country like India, however, the federation was not formed as a result of any agreement by the constituent units. The case of Switzerland is basically different, as we have already explained.

Equally important is the problem of the powers of the Upper Chambers. Once it has been agreed that there ought to be

Second Chamber, the problem of adjusting its functions and powers with those of the Lower Chamber will become exceedingly important. If a Second Chamber cannot manage to revise and improve on the legislation enacted by the Lower House, it will have no *raison detre*. It should be able to lighten the load of work of the over-crowded Lower House, but under no circumstances it should be given the power of thwarting the will of the people as expressed in the Popular House. It should be able to devote its attention to those topics which are not of first class importance but which are sufficiently important not to be neglected. It should be able to educate the people with regard to such matters, which are of concern to the community. It obviously cannot aspire to have a primary position in respect of law-making or in [illegible] policies and to the community in exercising control over the administration. It can serve as a watchdog on the executive activity. It can elicit information on important subjects; its debates, queries, vote, and investigation will prove a source of mass political education; it can provide training even to those of its members who are young. The need for such training is quite obvious. There are schools of Engineering and Medical Colleges in every community, but there are and there can be none for political education. The democratic political leader, who is not formally educated for his future assignment by any University,can be schooled only in the Legislature which becomes a pool of able national political leaders.

It is essential that the powers, functions and the constitution of the Upper Houses must be so adjusted with the powers and organisation of the Lower House that there should not be frequent deadlocks between them. The most common practice is that in matters of finance, the supremacy of the Lower House is always recognised. Money makes the mare go, and it was on questions of money that the battle royal was waged in Britain between the Monarchs and the Parliament, a battle in which one monarch lost his head and the other his throne, and a battle which ultimately resulted in the triumph of the Parliament. The American Senate is the only example in the world which has real political powers and which can create almost insurmountable difficulties for a President. It must, however, be stated that the new dimensions of the Presidency in the United States particularly after the year 1945, have tended to undermine the position of the Senate. But even today, the Senate is quite powerful. In other countries where the Uppr Houses originally were given co-equal powers, constitutional functions and practices have established the supremacy of the Lower House. This is true of Canada, Australia, Switzerland and other countries. In case of deadlocks in almost all the states, provisions for joint sittings or for joint committees of the two Houses are made. In the U.S.S.R. and Australia, disagreement between

the 2 houses, as we have noted, can lead to double dissolution. In point sittings, often the numerical strength of the Lower House is greater than that of the Upper Chamber. In the joint sittings, again, the Speaker of the Lower House presides and so the odds are against the Upper House. In fact, once a question has been decided in the Lower House, it becomes quite difficult for the Upper House to turn it down. And so we come to the conclusion that the value of bi-cameralism in democratic legislature is open to serious question. In short apart from its use to give representation to the territorial units comprising a federation, the advocates of bi-cameralism can hardly find any justification for a Second Chamber except in vaguely non-democratic terms such as the check and balance arrangements, or functional representation or the theory of restraint on popular passions.

SIZE OF LEGISLATURES AND QUALIFICATIONS OF LEGISLATORS

While it is commonly agreed that a Legislature must be constituted on the basis of universal suffrage and geographical representation, there is a great divergence of opinion on the question of the size of legislatures. The fashion, of course, is to put the size of the legislature at more than 400. In Britain, the House of Commons consists of 630 members; in France, the National Assembly has 665 members; in the United States the House of Representatives consists of 435 members; in India, the strength of the Lok Sabha is 509. In theory, large assemblies can, of course, be criticized as unwieldy and inefficient. But it must be remembered that frequently about 50 percent of the members attend the meetings of the legislature. Most of the legislatures have to work through Committees. Populations keep on rising and constituencies, therefore, keep on expanding. To reduce the size of the legislature would necessarily mean enlarging the electoral districts, which are already large. Any further expansion is bound to destroy the already weak personal relationship between the representative and the voter. A member of the British House of Commons represents as many as 80 thousand voters; a American representative over 1 lakh; a member of the Indian Lok Sabha about 5 lakhs and a French Deputy about 70 thousand. There seems to be no scope for cutting the size of the legislature in modern states.

As far as the question of qualifications is concerned, most of the states insist on some age qualification for membership of the legislature. It is quite customary to require the candidates in the national legislature to have attained an age beyond that required of the voter. The average age for membership is 25 years. At one time property used to play an important part in the enjoyment of civil and political rights. Property qualifications were common. The theory was that property brings [illegible] stability of character, sobriety, sense of responsibility and [illegible]

pendence of outlook. With the growth of democratic thought, the expansion of democratic institutions, and the increasing popularity of socialism, property qualification for an elective office gradually disappeared. Today, it is generally believed that property represents exploitation, that propertied classes can sacrifice the independence of their country in the interest of their class, and that property owners are usually biased in favour of propertied classes not only in their …
At one time it was also …
to have more time for …
who must earn their li…
force today, because in …
quite a decent salary. … members of the Clergy are debarred from service in the legislative bodies because of the fear of the Church influence. In most states members of the legislature are prevented from holding other public office. But in parliamentary democracies, Ministers are not only member of the legislatures, but they are their leaders also. Sometimes the question of educational qualification for membership of a legislature is also raised. It is asked whether legislators should be able to read and write. Obviously such a consideration is not important in advanced countries where everybody can read and write. It is of some importance in the under-developed areas or in countries where there are many languages. In a country like India there is no educational qualification and there are members who do not know how to read and write; there are those who know only Hindi; and there are many who can speak in English and in Indian languages. In Ceylon, most speeches are in English and practically every member of the Parliament can speak it. No difficulty arises in Canada where almost every legislator understands both English and French, or in South Africa where English and African can be used. It is obvious that members of a legislature must be able to read the language or one of the languages in which official documents are drawn. Usually an illiterate person is unlikely to to be elected unless he is a person of otherwise outstanding calibre in which case there is something to be said for having him in the legislature even if he cannot read the documents. Literacy is a matter of degree. The common test is ability to read and write a short letter, but that sort of literacy is not enough for the understanding of a complicated Bill relating to such a subject as bills of exchanges. "In these, as in many other matters, flexibility is safest. If one cannot trust the electorate to operate a Constitution successfully the solution is to insert safeguards or other limitations on self-government. A mere handful of illiterates in a legislature of a hundred persons is not likely to obstruct government. The greater danger is that there will be too many slick orators who can read and write fluently but who also lack the maturity of judgment needed for self-government."[1]

[1] Sir W. Ivor Jennings: *The Approach to Self-Government*. p. 124.

in India, as we noted in an earlier Chapter, one can contest election from anywhere.

OFFICERS OF LEGISLATURES

An analysis of this problem will involve consideration of sessions of the legislature, legislative leadership, legislative officers, rules of procedure, law-making procedure, closure motions and the organisation of Committees. Sessions can be both regular and special. Every legislature usually has one regular session during the term. The American Congress, the British and the Indian Parliaments have more than one Session. The length of these sessions varies. In case of emergency, special sessions of the legislature can always be called and secret sessions of the legislature are also invited. This happens when a country is waging war and defence affairs are discussed with a view to preventing vital information reaching the enemy. Every legislature must have officers to supervise its deliberations and voting and usually these officers are chosen by the legislature itself. In the British House of Commons, the Speaker who is a non-party man, is elected by the House of Commons immediately after a new parliament is formed. Normally the vote is unanimous and the Speaker in the previous parliament is invariably re-elected, if he wishes. Usually, the Speaker is not opposed in his own constituency at the general

...e recent occasions of contest. ...s in the interest of the House, ... He possesses great authority; he is the spokesman of the House of Commons; any message to the House is received by him; he executes the House's order; he enforces the rules of debate and decides questions of order. He never speaks in debate and only votes in the event of a tie and then in accordance with a formula rather than any personal opinion he may have. He decides which member he will call upon to speak in the debate, selects amendments for discussion, prevents repetition or irrelevance; has power to decide whether or not to accept a motion of closure, and whether bills, said to be Money Bills in accordance with the Parliament Act, do, in fact, comply with the provisions of the Act. He supervises debate, maintains order, refuses motions for delay if he thinks them inadvisable. He interprets the complicated rules of the Houses. He appoints a panel of M.Ps. at the beginning of Parliament from whom he

...

and speaks for the House to Her Majesty from whom he claims the privileges of the House. He can suspend or expel M. Ps and he can punish outsiders for contempt if the House approves. He sees whether voting takes place correctly and he pronounces the final result. He receives the salary of five thousand pounds a

year, lives in the Palace of Westminster and receives, on retirement, a pension of £4 thousand a peerage.

OTHER PARLIAMENTARY OFFICERS

Other Parliamentary Officers of the British House of Commons are the Chairman of Ways and Means and the Deputy Chairman, who may act as Deputy Speaker. Both these officers are elected by the House. In addition, there are the Party Officials, *i.e.*, the Government and the Opposition Whips. The chief task of the Whips is "to make a House, keep a House and cheer the Ministers." The House cannot meet without a quorum of 40 and at any time, the House can be "counted out" and forced to adjourn if the quorum is not available. It is the duty of the Whips to inform the M.Ps how they are expected to vote. They also organise the speeches in debate and arrange pairs with the opposition for absent members. The whips of both parties can meet "behind the Speaker's Chair" in order to plan business. They exercise strong party discipline over the members. The Chief Government Whip is a Parliamentary Secretary to the Treasury and is in close touch with the Prime Minister. The Whips of the Opposition are paid by the Opposition Party. Non-parliamentary or permanent officers of the House who are not members of Parliament, include the Clerk of the House of Commons, who deals with the papers and accounts of the House and assists the Speaker and advises members on questions of order and the proceedings of the House; the Clerk Assistants, who take minutes of proceedings and deal with notices of motions, questions and amendments; the Sergeant-at-arms, who attends the Speaker with the Mace (the symbol of the Speaker's authority) and arranges the policing of the House; and the Speaker's Counsel, who assists the Chairman of Ways and Means in the carrying out of the latter's duties with regard to Private Bills, and who is also, occasionally called upon to advise.

In the United States, the Speaker of the House of Representatives is invariably a leading personality of the majority party and directs his party's programme through the law-making processes. In fact there have been a number of impartial speakers in the United States. He is nominated at party Caucus and chosen by the members of the House of Representatives. The Speaker may appoint a Speaker Pro-tempore but for not more than 3 days at a time without the consent of the House. The Speaker presides over the House, appoints a Chairman to preside over the "Committees of the Whole", appoints all Special or Select Committees, appoints Conference Committees, has the [illegible] many important [illegible] with the President and are regarded as the spokesmen of the

legislature in the administration, if they and the President belong to the same political party. Along with the Speaker are elected the Chaplain, the Clerk, the Sergeant-at-Arms, the Door-Keeper and the Post-Master. All members in the Congress address the Speaker and one who has been recognised by the Speaker has the floor. Each party maintains Whips, who keep track of all important political legislation and try to have all members of their parties present, when important measures are to be voted upon. The office of Whip is unofficial and carries no salary.

In India, the office of the Speaker is not entirely impartial. Prior to independence, there were Speakers who were partisan and there were others who always maintained impartiality. In Uttar [illegible] always stood in favour [illegible] for impartiality inside [illegible] rs in India have retaine [illegible] em have played an important role behind the scenes in party meetings. The conference of the Speakers in India before the first general elections passed a resolution recommending uncontested elections of the Speakers but this was not acceptable to many political parties. The speakership in the Union Parliament has been held by G. V. Mavalankar, M. A. Ayyangar and now by Mr. Hukum Singh. By common consent, Mavalankar was one of the ablest Speakers in the Commonwealth and was highly respected by all parties. Ayyangar also was a man of experience and was quite effective. The present Speaker is a genial gentleman, loved by all sections of the House. The powers of the Speaker in India are quite as extensive as those of its counterpart in the British House of Commons—maintenance of order and decorum, the smooth conduct of business, the decisions on the admissibility questions and motions, the establishment of the scope of different kinds of debates and their regulation. Practically all the rules of procedure in the Indian Parliament have been made by the Speaker himself. He is the Chairman of the Business Advisory Committee; he has strong disciplinary powers and if he names a recalcitrant member, he can be removed from the floor of the House. He is the protector of the privileges of the House and of every one of its members. When the House of People is dissolved, the Speaker does not vacate his office automatically but [illegible]

member. In case of a tie, he can give his casting vote. There have been a few examples of bitterness generated by rulings given by the Speaker on some controversial issues or on the admissibility of motions of adjournment. On one occasion Oppo

sition members even moved a motion of no-confidence against the Speaker Mavalankar, although it was lost. At times there have been uproarious scenes in which the authority of the Speaker has been flouted and reflections have been cast on his impartiality. In August 1962, unprecedented scenes of disorder prevailed in the Lok Sabha, culminating in the suspension of a Socialist member Mr. Ram Sewak Yadava from the House for a week for persistently flouting the authority of the Speaker. In this case Mr. Yadava was named after he sought to raise an adjournment motion on the flood situation in Uttar Pradesh, which presumably was disallowed by the Speaker in his Chamber. The Speaker asked him not to interrupt the proceedings of the House and to resume his seat. Mr. Yadava kept on speaking even when he was ordered to withdraw from the House for the ...

... time that a member had flouted the order of the Speaker and refused to withdraw from the Chamber despite his appeals. When he refused to obey the Chair and withdraw from the House, the Parliamentary Affairs Minister, Satya Narain Sinha moved for his suspension for a week. The motion was carried by 235 votes to 29. Frequently, on the floor of legislature, in India, the Opposition parties have created ugly scenes. In one case the Chief minister of a State used offending words against the State Speaker. In Sptember, 1962, a Breach of Privilege Motion was brought against the Chief Minister of Uttar Pradesh for having made certain remarks which amounted to the contempt of the House. The motion, as read out by the Speaker said that " ... d to have said at a function in a Mu... considers himself to be very wise. ... I made him what he is to-day in the House. He gives so much time to the Opposition that I have to suffer for hours. The House is not the House on account of him." The Chief Minister expressed regret in the U.P. Legislative Assembly and the incident was thereafter closed. In short, the traditions of an impartial Speakership are yet to develop in India.

Thus, in India, while impartiality of the Speaker may still be in doubt, his powers are very considerable. Messages on behalf ...

... rules of debate and decides questions of order. He demands notices of questions and motions and he is to be satisfied whether a motion is in order. He checks the relevancy of debates, stops unnecessary repetitions, punishes disorderly behaviour and ... the closure of debates. He not only accords the privileges of the House but he is supposed to accord the rights of minorities. ... is the symbol of the dignity of the House and the House ...

meet without him. He weighs the importance and urgency of a matter and determines whether the national interest would be served by admitting or disallowing a notice. He can ask a Minister to place before him certain information he may like to consider in making a decision, which, of course, is final. Once he has closed a matter, it cannot be re-opened. He has to watch whether the decisions of the House have been executed. He is the watch-dog of the interests of the members of Parliament, is responsible for providing accommodation for the sittings of the House and its Committees, for telephones, payments of salary and allowances to members, the printing of Parliamentary papers and records, residence of the members, refreshment and retiring rooms in the Parliament House etc. He has to make necessary sitting arrangements in the Parliament House and he makes rules for the admissions of strangers and of Press Correspondents who, once admitted, are subject to his discipline. He issues summons to offenders and can call them to appear before the House on a charge of Contempt of the House. He interprets the relevant constitutional provisions with regard to Parliamentary matters, and the rules of procedure. He can ask a speaker in the House to stop, can order the expunction of passages from the records can ask a member to withdraw from the House for a day or part of a day, and can suspend a member on a proper motion. Every member of the House has to bow to the Chair while entering or leaving the House and also before taking or leaving his seat. He protects the honour of persons against defamatory or incriminatory statements of the House. He is the Supreme Head of all Parliamentary Committees set up by him or by the House. He can direct the Chairman in all matters relating to their working. He keeps in touch with the proceedings of the Committees. A Committee cannot meet outside the Parliament House without his permission and it cannot call officials and state governments for evidence without his previous approval. Some Committees such as the Business Advisory Committee, Rules Committee and the General Purpose Committee work under his chairmanship. He is supposed to look to the grievances of all members of the House, who can approach him by previous appointment. His decisions cannot be criticised in the House or outside. Speaking on March 8, 1948 on the occasion of the unveiling of the portrait of V. J. Patel, the Prime Minister observed: "Now, Sir, specially on behalf of the Government, may I say that we would like the distinguished occupant of this Chair now and always to guard the freedom and liberties of the House from every possible danger, even from the danger of executive instrusion. There is always that danger even from a National Government, that it may choose to ride roughshod over others, that there is always a danger from a majority that it may choose to ride roughshod over the opinions of a minority, and it is there that the Speaker comes in to protect each single member, or each single group from any such unjust activity, by a dominant group or a dominant Government. Vithalbhai Patel performed that function at a

outside party politics. We have to go a long way; there are difficulties we have to meet; the path is not easy. But let it be emphasised that no legislature can function with dignity unless its presiding officer is impartial himself and all parties have implicit faith in his judgment.

In addition to the Speaker, there is the Deputy Speaker of the Lok Sabha who has to function in the absence of the Speaker. In the absence of the Speaker and the Deputy Speaker, one of the five Chairmen, nominated by the Speaker, presides. Other officers of the Parliament include the Secretary and his staff. who are

The staff of the Lok Sabha Secretariat numbers about 300 and is organised in several branches. The Delhi Secretariat guides all State Legislatures Secretariats. The Secretary is the Advisor to the Speaker and in his absence authenticates Bills, sends and receives messages on behalf of the House, receives notices, petitions, documents and papers addressed to the House, issues summons under his signature to witnesses to appear before the House, carries on correspondence with members and others on behalf of the Speaker, controls the finances of the House, prepares the Journal of the House and accompanies Parliamentary delegations abroad. He is also the Secretary to the Conference of Presiding Officers of Legislative bodies in India. He is unconnected with politics and is a permanent official. He is not subjected to criticism in the House and he is responsible only to the Speaker. In fact, the entire Secretariat of the Lok Sabha is completely under the control of the Speaker.

In the Council of States, the Vice-President of India is ex-Officio Chairman, just as the Vice-President of America is the Chairman of the American Senate. He holds office for a term of 5 years and has powers and functions similar to those of the Speaker. In his absence the Council of States is presided over by the Deputy Chairman elected by the Council from amongst its own members. A panel of Vice-Chairmen is appointed by the Chairman of the Council of States and one of them presides when the Chairman and the Deputy Chairman are both absent. The Council also has a Secretary, who has powers and functions similar to those of the Secretary of the Lok Sabha.

In Canada, Australia and Newzealand, the Speakership is regarded as a privilege of the party in power and it usually changes with the government. While in Britain and in India, generally the Speaker's constituency is left uncontested, it is not so in these countries. When the House goes into Committee, the Speaker does not necessarily refrain from taking parts in debates and voting in divisions. But it must be stated that in these countries, the impartiality of the Speaker is rarely in doubt. He receives the active assistance of all parties and of all members in the Parliament. In Australia, at least, there is a very good reason why electoral

immunity is not given to the Speaker. The House has only 75 seats and it is obviously unreasonable to disfranchise the whole electorate by leaving the Speaker unopposed. But in all these countries, the rulings of the Speaker sometimes have been voted down. Here as well as in South Africa, the speakership is not necessarily a summit of a member's Parliament career and a Speaker, after completing his tenure of office, may return to active politics. On retirement from the Speakership many people later on become Ministers. There are few countries in the Commonwealth, where the Speaker is not formally a member of the House. Finally, it must be stated that in parliamentary democracies the Speaker's ruling constitute the third main basis of procedure, the other two being the practice of the House and the standing orders. The more important rulings of the British Speaker are incorporated into successive additions of Erskine May's Parliamentary Practice.

LEGISLATIVE LEADERSHIP

A legislature without leadership can obviously behave like a crowd. A Government which is responsible to such Legislature will also be ineffective. In Parliamentary democracies, it is the Cabinet which leads the Legislature. And even in Presidential [illegible] states like the United States of A[illegible] Secretaries are not members of [illegible] provide, in the main, initiative i[illegible] lative policies. In that Country, [illegible] istic of parties and that accounts for the fact that the Chief Executive cannot always count on party support for his legislative programme. Sometimes, the opposition party having a working majority, or in a alliance with a section of the President's party, can create innumerable difficulties for the President. But in the post-war period (after 1945) problems of national security, the growing power and prestige of the United States in world politics, the increase in danger of a thermo-nuclear war, the growing economic problems, have added new dimensions to the office of the American President. T[illegible] Eisenhower and Keneddy have all been compelled to p[illegible] much difficulty. Thus, [illegible] which normally must produce institutional obstacles to adequate legislative leadership by the President, the latter has been able to influence and guide the Congress in the law-making process. In the House of Representatives, the Speaker provides another important element of legislative leadership. Individual Representatives and Senators can also exert considerable influence. In the United States, "legislative leadership authorty is diffused among a number of uncoordinated persons and groups with the result that the laws produced by the Congressional mill more often than not form a crazy quilt pattern instead of a finely woven cloth.

In France, under the Constitution of the Fifth Republic, the

President has extensive legislative powers. He promulgates laws within 15 days following the transmission to the Government of the finally adopted laws, and may, before the expiration of this time-limit, ask Parliament for a reconsideration of the law or of certain of its articles. The Constitution specifically lays down that "this reconsideration may not be refused." On the proposal of the Government during Parliamentary sessions or on joint motion of the two Assemblies published in the Journal Official, the President may submit to a referendum any bill dealing with the organisation of the public powers, entailing approval of a community agreement, or providing for authorisation to rectify a treaty that, without being contrary to the Constitution, might affect the functioning of the institution. When the referendum decides in favour of the bill, the President promulgates it within the time-limit stipulated in Article 10 as quoted above. He is empowered, after consultation with the Premier, and the Presidents of the two Houses of Parliament to declare the dissolution of the National Assembly. He signs the ordinances and decrees decided upon by the Council of Ministers. He can communicate with the two Houses of Parliament by means of messages, which he can cause to be read, and which shall not be the occasion for any debate. Between sessions, the Parliament shall be specially convened for this purpose. All extraordinary sessions of the Parliament are opened and closed by his decree. In the Fourth Republic, the Legislative leadership was as diffused in France as in the United States and this situation was largely a product of Parliamentary supremacy, multi-partyism and legislative procedure. The Government could easily be confronted by a hostile legislature. Most of the legislative initiative came from the National Assembly itself. The Chairman of the powerful Standing Committees constitutes a major source of authority. The agenda of the Parliament was not controlled by the Council of Ministers. But under article 16 of the New Constitution the President enjoys tremendous control over other organs of state whenever he feels that there exists a grave or immediate threat to the nation. The President is the sole judge to decide whether he ought to assume plenary powers under the Constitution. Inside the Parliament, it is the National Assembly which has the final word in matters of legislation; the role of the Senate is secondary. If the Parliament fails to pass a law desired by the government, it can be promulgated as an Ordinance and this applies even to an Annual Budget.

to the government. Party discipline is tight. The Speaker of the House of Commons is non-partisan. A private member is more or less a non-entity. Party splits are rare. The only oppo-

of the House is complete. Government initiative in finance is unquestioned. In the Committees, the government can always be sure of its majority. A law passed by the House of Commons is sure to be passed by the House of Lords and once it is so passed, it will certainly be ratified by Her Majesty. Thus at all levels [illegible] oncentrated and it can always [illegible] In India, as we stated earlier, [illegible] em which leaves the Congress party an unchallenged scope not only at the Centre but also in all the States. The opposition is disorganised and the government has a tremendous majority. The party discipline is fairly tight at least at the Centre. Even in the States, the Congress High Command can impose its leadership. The legislative initiative rests with the Council of Ministers and once a piece of legislation is introduced by the government in the Lok Sabha, it is sure to pass in both the Houses. Effective opposition to a certain law may [illegible] itself but not from the opposition [illegible] ees are dominated by the govern- [illegible] rge, cannot do much about a law. [illegible] register its approval of law passed by the Lok Sabha. Since the Constitution came into force, the President has not refused to sign a single law. This picture more or less prevails even in the States. In case a State Government is manned by a party other than the Congress party, legislative leadership of the State Government may be in doubt. The reason [illegible] State Ministry. Sometimes a Bill passed by a State Legislature may be rejected by the Union President or modified in the light of the directives given by the Centre. The Kerala Education Bill is a case in point. But such examples are rare. In conclusion we may say that in India also the legislative initiative and leadership rest in the hands of the Government.

RULES OF PROCEDURE

Parliamentary procedure in modern states is a combination of two elements—the traditional and the democratic. The latter is a growth of the last century and is embodied in the Standing Orders, while the former is "the Practice of the House"—the body of rules and precedents which grew up gradually. In Britain most of the rules governing debates in the House of Commons had been established by the beginning of the 17th century, although they tended more to protect minorities and the individual member

than to facilitate the business of the House. The Standing Orders were introduced in 1832 and they were really amendments to the established practice and not a separate code. They were intended to prevent the obstruction of business and to introduce more efficient methods for the conduct of business in the Parliament. Methods which were employed by small groups to bring the business of the majority to a standstill, included the discussion of petitions, the move of dilatory motions, and talking at length on non-controversial subjects in order to delay progress on more obnoxious items. These obstructional devices were suppressed and methods of controlling discussion were introduced in 1882. In the first place, the device of "closure" was adopted in order to bring to an end a debate or speech by a member moving that "the question be now put." The Speaker can refuse this motion if he thinks the rights of minorities have been infringed. This device was instituted as a result of the action taken by Speaker Brand on February 2, 1881 [illegible] tection of Person and Property Bill for unconcealed purpose of obstructing the business of Parliament. The "closure" may be simple or contingent. It is contingent when it is applied to a debate on an amendment to the main question. There is also a [illegible] is that it may save some time, although a considerable time is always lost in the discussion of the motion itself. Finally, there is the "kangaroo" under which certain amendments only are chosen to be discussed and those passed over are not debated. The power of selecting amendments was first introduced in 1909 and its exercise required a special decision of the House. The Standing Order of 1919 established it as a permanent power of the Chair. In 1934 it was extended to the Chairman of Standing Committees. Because it involves jumping over certain amendments on the order paper, the process of selecting amendments is known as the "kangaroo."

The adoption of these devices helps the Legislature in rushing through business. Since 1907, extended use of Standing Committees has been made. In 1896, the system of "Allotted Days" was introduced, which cut short the time taken in the discussion of financial votes, and in 1881 the discretionary powers of the Chair to limit debate were increased. Thus :

The procedure in the British House of Commons is based on

(*a*) practice, (*b*) the Standing Orders and (*c*) the Speaker's Rulings which are interpretations of Standing Orders. Gradually the Rules of Procedure were codified in authoritative Manuals, the most important of which today is Erskine May's Parliamentary Practice, which first appeared in 1844 and is now running in the XV Edition. In 1946, on the basis of the report of the Select Committee on Pro-[illegible] n the procedure of the [illegible] ere necessitated by the [illegible] ne sittings of Parliament, questions, motions for the adjournment of the House, the business of supply, the reception of notices, the machinery of the Guillotine and the constitution and functions of Standing Committees. The procedure of the House of Lords is different from that of the House of Commons in respect of rules of debate, and the maintenance of order. This difference arises from the difference in the position of the Speaker and that of the Lord Chancellor. The latter is technically not a member of the House of Lords and has no powers of exercising strict discipline over the House of Lords. Legislative procedure, however, is much the same in both Houses. Debates can arise out of resolutions, motions or questions. Starred questions can be asked in the House of Lords for the purpose of obtaining specific information. In the House of Lords, a peer can introduce a bill without obtaining the leave of the House and move its first reading. The procedure on voting is similar to that in the House of Commons, but the Lord Chancellor has no casting vote. With exception of questions relating to bills and subordinate legislation, the House of Lords is governed by the principle that the question is decided in the negative unless there is a majority in its favour. When the House is sitting judicially, the question is put in such a way that, if the votes were equal, there would be no interference with the order under appeal.

In the House of Commons, the Speaker has the responsibility of deciding whether a bill is a money Bill and who, in case of doubt, is the leader of the Opposition. The quorum of the House as we stated earlier is 40; no business can be transacted if, upon the appeal of a member to the Speaker, it is found that a quorum is not present [illegible] All proceedings of [illegible] extremely rare occasions, ar[illegible] aily in the Officials Reports, [illegible] he Speaker in the House of Commons can stop speakers from using improper language and from behaving in objectionable manner. Even outsiders can be reprimanded. Each annual session is opened with the Queen's Speech—the Official Statement of Government Policy, and clo[illegible] ommons meets five days a [illegible] m 2.30 P.M. until 11 P.M. [illegible] P.M. The length

of the sitting may be extended by suspending Standing Orders. Each sitting starts with Prayers followed by private business and question-hour. Motions of Adjournment can be moved after 7.30 P.M. The main business is on the Orders of the Day, which can be interrupted at 7.30 P.M. At the end of public business (10.30 P.M. on a normal day), the adjournment debate takes place for half an hour. In recent years, the number of days and the length of the day that Parliament sits, has increased. Membership of Parliament has become a full time occupation and this accounts for the payment of salaries to the M.P.s At one time members of Parliament were not professional politicians and they [illegible] somely and they are professional politicians. The House, however, still begins its sitting at 2.30 P.M. in order to enable the members to work in the Committee in the morning hours. The most important part of the Rules of Procedure is the the question-hour. The first formal question to a Minister was put in 1721 in the House of Lords and questions first appeared on the Order Paper in 1835. At first a member could ask any number of questions: it was fixed at 8 in 1909 and at 4 in 1919 and finally at 3 oral questions in any one day. The question time in the House of Commons begins not later than 2.45 P.M. and finishes not earlier than 3.30 P.M. Two days' notice must be given to allow time for the answer to be prepared by the Minister concerned. Question requiring an oral answer are called Starred questions. Since it will be impossible for all questions to be answered in the House, their order is so arranged as to give every Minister his turn at answering questions orally on certain days each week. The Prime Minister answers questions on specified days only. Erskine May lists 29 types of questions which are not allowed now. For example question affecting the Royal family is disallowed. A question must not seek an expression of opinion from a Minister, must not repeat rumours or gossips, must be founded on facts for whose accuracy the member himself is responsible. A Minister is not bound to answer a question. A member asking a question is allowed to ask supplementary questions arising out of the answer received.

Adjournment Motions form another important element in Legislative Procedure. The House of Commons can be adjourned by the Speaker if there is not a quorum present or if there is grave disorder or when the normal end of the sitting takes place at the end of the day without putting any question. Members receiving [illegible] that they [illegible] thinks [illegible] s of the House, he can refuse to accept it. Both Houses can adjourn as a token of respect at the passing of a distinguished person, particularly a member or an ex-member. On April 12, 1945, when

Deputy-Speaker in India. But it must be remembered that they do not take part in the affairs of their parties particularly in regard to matters which are likely to come before the House for discussion. An important circumstance having a bearing on the Rules of Procedure in India is the absence of an organised opposition in the Legislature. The arrangement of business and allocation of time in the House, which in Britain falls within the scope of the Whips is, in India, entrusted to Committees appointed by the Speaker. The sittings of the House commence at 10.45 P.M. and conclude at 5 P.M. unless the Speaker otherwise directs. A Session of the House begins with the President's address and then the House considers the Motion of Thanks moved by a member. Amendments to such motion of Thanks may be moved in such form as may be considered appropriate by the speaker. On days allotted for the transaction of government business, such business has precedence, and the Secretary arranges that business in such order as the Speaker after consultation with the leader of the House

made available for use of every member. The first hour of every sitting is devoted to questions and answers. Not less than 10 clear

oral answers. A question may be addressed to a private member provided the subject-matter of the question relates to some bill, resolution or other matter connected with the business of the House for which that member is responsible. In India there are 22 con-

has been the subject of a recent question and the answer to which

or leaving the House. He has to address the Chair, cannot obstruct proceedings, cannot pass between the Chair and any member who is speaking, and cannot leave the House when the Speaker is addressing the House. No member can speak unless he has got the Speaker's eye. Every member has to speak from his place. Unparliamentary expressions cannot be used. No member can use the President's name for the purpose of influencing the debate. No allegations of a defamatory character can be made against any person. No speech made in the Council of States can be quoted in the Lok Sabha unless it contains a definite statement of policy by a Minister. In India, as in England, Closure motion can be moved at any time by any member and if it is carried, the question shall be put without further debate. If a particular debate gets protracted, the Speaker may fix a time-limit for the conclusion of discussion on any stage or all stages of the Bill. Detailed conditions are laid down for points of order. There are rules for admission of strangers, and whatever is not provided in the rules of procedure, is left to the discretion of the Speaker. The quorum in the House is 50 including the Speaker or the Presiding Officer. Under a convention adopted in September, 1954, the House is not counted between 1 P.M. and 2-30 P.M A Voice Vote is taken during that period, but if it is challenged, no count is taken and the decision on the question is postponed till after 2.30 P.M.[1]

The procedure and customs of the Canadian House of [illegible]

[illegible] bers are present he asks if those in favour of the motion or amendment will please rise. Members, beginning from the front benches, rise separately; the Clerk Assistant calls out their names, and the Clerk records their vote on a printed list. Members are taken in rows, and the Leaders of the Government and the Opposition are called out first as a matter of courtesy. When the 'Yeas' have voted [illegible] then [illegible] and [illegible] ost as the case may be). Another unusual feature of Canadian procedure permits a member to appeal to the House against any decision of the Speaker on a point of order, a practice which is common to all Canadian legislatures.

In Australia, the rules of procedure are also similar in many ways to the rules followed in the British House of Commons. But

[1] See Rules of Procedure and Conduct of Business in the House of the People. Also refer to Lok Sabha Hand Book for Members and Directions by the Speaker in the Rules of Procedure of the Lok Sabha.

there are striking differences also. The Labour Speakers have refused to wear the usual role of office and have, on the whole, been partisans. Very few private bills are introduced in Australia. No provision is made for private bills. The Standing Order provides for time-limit for speeches. There is no provision for an automatic adjournment. There is, of course, the question-hour. [illegible] evei [illegible] foll [illegible] are compounded from English Precedents. Legally, of course, the Congress can do almost anything by unanimous consent. Without objection from members, either branch of Congress may [illegible] or, when a vote is taken, by a voice vote rather than a roll call count. There are roll calls and debates on important and controversial measures involving high policy, or on which there is substantial disagreement. All legislation in the American Congress takes one of four principal forms—bill, joint resolution, concurrent resolution and simple resolution. Bills are employed for most legislation whether having a public or private purpose. Joint resolution as well as the Bills require the President's signatures to become laws. Their purpose is always public. Concurrent resolutions are normally not legislative in character but concern Congress alone or embody an expression of opinions. It is, of course, not binding on the President, but it gives notice of a legislative attitude. Simple resolutions concern only one House and seeks to express its opinion on some aspect of foreign policy or amendment of its own rules. Such a resolution has no standing or force except as it affects or reflects the views of one House or the other. Either House has also the power of investigation and it is based on British precedents. As [illegible] Representatives had asserted its [illegible] Committee to investigate a militar[illegible] sional Committees—regular or special—have enquired into an endless number and varieties of subjects in public interest. The Supreme Court of America had upheld this right and also the right to punish contumacious witnesses for contempt. During the [illegible] Vice-President Truman, who later became President of the United States. Hostile or fearful witnesses sometimes rely on the 5th Amendment to the Constitution in justifying their refusal to testify any responsibility to Committee question. The Committee, however, is the final judge of whether self-incrimination is, in a case, involved or not.

Every member of the Congress takes the oath of office at the

beginning of his term with the consent of all the members selected. If the right of any member-elect to take the oath for any reason is challenged the member would have to step aside until the complaints or charges have been disposed of. Any member may sit anywhere in the Congress, but the convention is, that Democrats occupy the East side of the Chamber, on the Speaker's right, while [illegible] s also a mace here, which [illegible] authority in the United [illegible] House of Representatives [illegible] s [illegible] e [illegible]

When the Congress first meets, the Clerk calls the members to order and proceeds to call the roll of members by states in alphabetical order. During Sessions, the flag is raised over the House Wing of the Capitol. Messengers may be sent from one house to the other only when both Houses of Congress are in Session. By rules of the House, the President, Supreme Court Justices, Librarian of Congress, and Law Librarian, State Governors and certain other persons may be admitted to the floor while the House is in Sessi[illegible] of having the floor. When the [illegible] e members to order and the [illegible] the pedestal at the right of the Speaker's platform. Then the Chaplain offers prayer. After this the Clerk reads the journal of the preceding day's activities. The members of the Committees make reports of Bills and then the House is ready to consider the bill left unfinished the day before, or take up a new bill on the calender if there be no unfinished business. If the mace is on the pedestal, the Speaker is presiding and the House is in Session. When the Committee of the Whole is in Session, the mace is off the pedestal and the Chairman of the Committee of Whole is presiding.

The House of Representatives has a Steering Committee consisting of leading majority members and chosen by the majority caucus to exercise supervision over the handling of business by the House. No member of the House is allowed to speak for more than an hour without unanimous consent. General debate in the House is [illegible] lly divided between [illegible] the individual mem[illegible] Committee of the Whole for amendments, each member is limited to 5 minutes except by unanimous consent. The quorum is a majority of the membership. Much business is transacted without a quorum, but no business of any character, except to adjourn, can be transacted without a quorum present, if any member objects. Voting is mostly [illegible]

[illegible] ted to make the count. A motion for the previous question, if agreed to by a majority of members voting, has the effect of cutting

off all the debate and bringing the House to a direct vote upon the immediate question or questions, on which it has been asked and ordered. Members are permitted to address the House and extend their remarks in the Congressional record by unanimous consent. The rules of the House also provide for secret Sessions. The House and the Senate, ordinarily meet at 12 o' clock noon and usually remain in Session until 5 or 6 P.M. All members of the Congress are provided with offices in which they conduct their business. Both Houses have visitors' galleries and the visitors are subject to control by the Presiding Officers. Since 1837 members of Congress have been forbidden to wear hats on the floor. Neither House can compel the attendance of a member and when both the Houses are considering the same subject, it is a breach of order for members of one to make reference to action taken in the other. Each House keeps a journal of its proceedings, which does not report debates but the bare Parliamentary proceedings. The Congressional Record, however, contains a complete official record, taken stenographically, of every thing said on the floor of both Houses.

At one time in the Senate there used to be what is called "filibuster"—the practice of deliberately taking advantage of freedom of debate with a view to delaying or preventing action on a measure under discussion. But in 1917, the Senate adopted what is called the Cloture Rule. As amended in 1949, it provides that the Senate may end a debate by a two-third vote of the entire body. When 16 Senators file a petition asking to end debate-the Senate must vote on the petition at 1 P.M. the second calender day thereafter. If two-thirds vote for cloture, then no Senator may take longer than one hour. So long as one-third of the Senate is opposed to cloture, it is impossible to end a filibuster. In April, 1953, Senator Wayne Morse of Oregon broke all Senate records when he spoke continuously on the Tide Lands Bill for 22 minutes, the previous record being 15 hours 35 minutes by Senator Huey Long in 1935. A filibusterer can avail himself of a number of technical parliamentary moves which are time-consuming and effective without his losing the floor. The practice of pairing also prevails in the American Congress and it has been officially recognised in the House Rules since 1880. Under this practice, two Congressmen of opposing parties who plan to be absent, agree, that during a specified period they wll refrain from voting in person but will permit their names to be recorded on opposite sides of each question.

Finally, it may be stated that according to the American Constitution, each house may determine the rules of its procedure. The parliamentary practice of the Congress emanates from four sources: the Constitution, the Jeferson's Manual, the Rules adopted by the House, and the decisions of the Speakers and Chairmen of the Committees of the Whole. The Legislative Reorganization Act of 1946 changed the rules of the two Houses

in certain important respects subject to the constitutional rights of either House to change them again at any time. At many points procedure in the two Houses is governed not by printed rules but by oral agreement between individual members or the membership as a whole. In fact, practically anything can be done in either House by unanimous consent—except where the Constitution or the Rules specifically prescribe the Presiding Officer from entertaining such a request.

In conclusion we may say that all legislatures have their own rules of procedure devised long ago. In many cases they are hardly suited to the demands of modern times and are really cumbersome and involved and have the effect of slowing down rather than expediting the legislative process. For example, the rule that a bill should be passed in 3 readings, at least one of which shall be a reading in full, is, in our opinion, completely outmoded. It might have been reasonable before the invention of the Printing [illegible] the roll of members is called and each member responds by standing and declaring his vote, which is then recorded by the Clerk. In short, the rules of procedure must be simplified if delay in law-making is to be avoided. Just as speedy administration of justice is an important element in the democratic process the speedy process of law-making is also an extremely important factor. This also requires an extensive use of Committees.

LEGISLATIVE COMMITTEES

The Committee system is as old as the Parliamentary system itself. In Britain, the "receivers" and "triers" of petitions who began to be appointed during the reign of Edward I, have been regarded as the earliest examples of the Committee system, and by the 17th century the system had developed considerably. In the United States, and on the Continent, the Committees have existed for a long time although their practice differs from those in Britain. In that country the Committees were wholly subordinate and auxiliary to the House. In the United States, on the other hand, there are Committees of Congress which formulate [illegible] "The essence [illegible] rely that it is a [illegible] mitted by some other person or body...the notion of the Committee carries with it the idea of a body being in some manner or degree responsible or subordinate or answerable in the last resort to the body or person who set it up or committed all power or duty to it."[1] It is in this sense that the Committee system in India is developed. As in

[1] *Government by Committee—An Essay on the British Constitution* pp. 5-6.

if they deliberated in his presence, he would repeat what they said to the King. So they decided to discuss financial business in Committee, which meant that the Speaker left the Chair and a Chairman took his place. Although the Speaker is no long-r suspected, the procedure goes on as before, with advantages quite unintended by those who devised it. The Committees of the Whole House ensure privacy and a flexible and informal procedure. The Press can be excluded from them. Members are often permitted to speak more than once. A Committee of the Whole House can be (*a*) an Ordinary Committee on a Bill, (*b*) a Committee on the Whole House on a Money Resolution, (*c*) a Committee of Supply to sanction expenditure and (*d*) a Committee of Ways and Means to sanction Revenues. It is presided over not by the Speaker but by a Chairman. Whenever the House of Commons goes into Committee, the Speaker leaves the Chair and the mace is removed from the table by the Sergeant-at-arms and placed in the lower brackets. The Chairman of Ways and Means or the Deputy Chairman then presides, occupying not the Speaker's chair but a chair at the table. The occupant of the chair enjoys the full authority of the Speaker except that he is not empowered to inflict serious forms of punishment such as suspension from the House or Committal. The House of Lords also can have a Committee of the Whole House.

Secondly, there are Standing Committees to which a Public Bill can be referred. They were set up for the first time in 1882 and originally they were two in number. In 1907, the number was increased to 4 and in 1919 to 6. In 1947 it was agreed to have as many as necessary. At present there are 6 Standing Committees and they are called as A,B,C,D,E, and the Scottish Affairs Committee. A Standing Committee has no permanence or individuality; its members are constantly changing and it does not receive one type of bills more than another. All parties are represented in it in the same proportion in which they are represented in the House of Commons. The average strength

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the commencement of every Session. The rules of debate observed in these committees are the same as are followed in the Committees of the Whole House. The Select Committee on Procedure recommended in 1957 that the quorum of Standing Committee other than the Scottish shou

or more members, and 12 w

In other Commonwealth co

there are standing Orders Committees which are set up at the beginning of every Session.

We have already referred to the Select Committees which are of an adhoc character. A Select Committee is so-called because it is a Committee of members selected from the entire membership

of the House. The term is associated with the idea of an enquiry. Its main function is to do the work for which the House itself is [illegible]

House of which it is only a creature. At its first meeting it elects a Chairman to preside over it until its work is done and in case he is unable to attend the meeting, another man is temporarily elected to take his place. There is also the rule that the senior member of the House fixes the time and place of the first meeting. The Select Committees play a very important role in Britain—they break solidarity of the party, are dreaded by the Whips, and through them the House escapes from the bondage of government authority. Their recommendations are public and cannot be concealed. Sometimes they also enable the Government to save their face. The normal strength of a Select Committee is 15, drawn from all parties. A Select Committee cannot submit a minority report.

[illegible]

by Standing Order), and the Committee of Privileges, the Select Committee on Estimates, the Kitchen Committee. The Select Committee on Statutory Instruments, the Select Committee of Publication and Debates, and the Committee on Public Petitions. Sessional Committees exist in the House of Lords also. There is also a Joint Committee of both Houses in Britain appointed every Session on Consolidation Bills. In other Commonwealth Parliaments, Sessional Committees are called Standing Committees.

Joint Committees usually consist of an equal number of members of both Houses and are appointed from time to time at the instance of one House or the other. They are intended to investigate a matter which might have aroused interest in both Houses. From the point of view of the House of Commons, a Joint Committee is only a Select Committee deputed to meet a Select Committee of the Lords. The Common's members of this committee form a distinct body with powers conferred on them and a quorum fixed for them by their own House and the duty of making their report to it. Such Committees cannot meet unless a quorum of Common's members (or for that matter, a quorum of Lords) is present. They cannot do any thing which they are not specifically empowered to do by both Houses. In fact, they are, like Standing Committees, a rather recent development and their powers and procedures are a little uncertain. They do not constitute a common feature of Parliamentary landscape. The report of a Joint Committee is presented to both [illegible] belongs and [illegible] If [illegible] made [illegible]

Committee itself in its first meeting, there is the rule that the senior member of the Committee fixes the time and place of the first meeting. In India, no such difficulty exists because the Chairman is appointed by the Speaker as we have already said.

The quorum is, as near as possible, one-third of the total number of members. If the quorum is not available on two successive dates fixed for the meetings, the Chairman of Select Committee has to report the fact to the House. In case a member absents himself consecutively for two meetings without the permission of the Chairman, he may be discharged from the Committee on a motion being moved in the House. With the permission of the Speaker, members of the House who are not members of the Committee may be allowed to attend the deliberations of the Committee but such members have neither the right to address the Committee nor the right to vote. However, a minister who is not a member of the Committee, may address it on any point which is being considered by it provided he has the permission of the Chairman. The Chairman has, apart from the ordinary vote, a second vote (casting vote) in case of a tie. This is, once again, a departure from the British system where the Chairman of a Select Committee has only a casting vote.

Again, in England a Select Committee cannot meet outside the Palace of Westminster or on a day when the House is not sitting, without special leave because "the Committee is only a creature of the House." In India, on the other hand, a Select Committee is not bound by such considerations and can sit wherever it chooses irrespective of whether the House is sitting or not. Of course, if there is a division in the House, the Chairman of the Committee has to suspend the proceedings of the Committee for such period as will enable members to vote in the division.

In England, the rule is "delegatus delegare non potest", and accordingly, since the House has delegated certain authority to a Select Committee, it must not attempt to delegate that authority to some one else. So, in England the rule is that a Select Committee cannot appoint a sub-committee without the permission of the House. In India, on the other hand, a Select Committee may appoint a sub-committee and it meets on days which are fixed by the Chairman of the Committee, or in his absence, by the Secretary of the House. The reports of the sub-committee are made to and are considered by the Committee.

The meetings of a Select Committee are held in private and are informal. The officers of the Secretariat of the House and the Government Draftsmen assist the Chairman in the discharge of his duties. The Secretary of the House nominates a Secretary to the Committee from amongst the officers of the Secretariat. If on any point the Committee desires any information from a Ministry, the Minister concerned and the officials of the Ministry may be summoned to appear. As in England, the minutes of

a Select Committee are brief and they record not what is said but what is done.

First, the Committee holds a general discussion on the Bill. This is followed by a clause-by-clause consideration. Unless otherwise allowed by the Chairman, members have to give notice of amendment a day in advance. A notice of amendment to

ittee in the House while

red to the Committee.

ower to send for persons,

which give the Committee a right to summon any British subject, not being a peer or an M.P to give evidence before them. In India too this power is given to a Select

ny question arises whether the

ction of a document is relevant

Speaker and his ruling is final. Further, the Government may refuse to produce a document in public interest. In some cases, persons affected by a bill wish to appear before the committee and in such cases the Committee usually permits. No document which has been submitted to a Committee can be later withdrawn without its permission. A full record of the evidence duly corrected and verified by the witness concerned is kept. The Committee decides the nature of question that might be put to the witnesses and the mode of procedure. First the Chairman and then the other members of the Committee put questions to the witnesses. A witness may be asked to place before the Committee any other relevant point not covered by such questions. The evidence is made available to all the members of the Committee. The proceedings of the Committee can be published only when they have been presented to the House. Prior publication would be a breach of privilege. It is

House.

It has been said above that a Select Committee is only a creature of the House. It derives all its powers from the House. It follows, therefore, that it cannot alter the substance or the main conception behind the bill. The decision about the principle involved in a Bill is that of the House and it cannot be altered by one of its Committees. The Committee only considers the details clause by clause with a view to ensuring that the provisions of the Bill bring out the intention behind the principle, that in its working no procedural defect remains, and that it does not violate the provisions of any existing law. Thus the rule is that "the Select Committee has a right to add to or to delete from or to improve upon the provisions of the Bill referred to, provided the additions, deletions or improvements suggested by the Select Committee are within the scope of the Bill." The effect of this rule is that in the Committee no amendment may be moved

which contravenes the principle underlying the Bill, although the Committee may negative a clause, which may, in effect, negative the Bill altogether. Thus the Committee may negative all the clauses or change every one of them by new ones.

Another limitation on the Committee is that any Bill which is committed to it cannot be withdrawn here. It can be withdrawn only in the House which committed it to the Committee. According to an old ruling, the Committee cannot report disagreement with the principle of the bill, though it can report that the House should not proceed with the Bill. Similarly, if a witness had desired that a specific piece of his evidence be kept confidential that part would not go published. The report is signed by the Chairman and he or, in his absence, another member, presents it to the House.

The report is drafted in two parts. In one part is contained the Committee's suggestions for amendments, their reasons and explanations and in the other is given the Bill in its amended form. The report contains the decisions of the majority of those present and voting. In England, if some members of the Committee do not agree with the draft report presented by the Chairman, they can propose an alternative draft report, and then the question is decided whether the Chairman's draft report or some other member's draft report should be considered. There is nothing like a minority report and "the Committee is a solid entity, incapable of anything but unanimity". In India, on the other hand, members may attach a minute of dissent or a note to the report but they should not disclose any discussion that might have taken place in the Committee nor cast any aspersions on other members of the Committee. The Committee has to wind up its work within the time laid down in the motion for reference of the Bill to it. An extension may, however, be allowed on a motion moved by the Chairman of the Committee or the member-in-charge of the Bill. The causes of the delay are explained to the House and the House may direct the Committee to expedite its work. In case no time is laid down, the Committee has to report within 3 months from the date of the adoption of the original motion for reference of the Bill to a Select Committee.

Sessional Commitees are those Select Committees which continue to work for the Session. They are regularly set up at the beginning of every session and cover a wide field. In India we have about a dozen Sessional Committees and to them now we turn.

The Business Advisory Committee consists of 15 members nominated by the Speaker at the commencement of the Session. The Speaker himself is its Chairman and if he, for any reason, is not able to attend a meeting, he is empowered to nominate a Chairman for that meeting. The quorum of the Committee is five. The most important function of this Committee is to recommend the time that should be allocated for the discussion of the stage or stages of such Government Bills or other Government

business as the Speaker in consultation with the Leader of the House may direct for being referred to the Committee. It also indicates in the proposed time-table the different hours at which various stages of any such Bill or business shall be completed. The Speaker may also assign other functions to this Committee.

After settling the time-table in regard to a bill or a group of bills and other Government business, the Committee makes a report to the House. In case the motion of the Minister of Parliamentary Affairs that "the House agrees with the report of the Business Advisory Committee" is accepted, the allocation of time made by the Committee takes effect as if it were an order of the House. The House may refer back the report to the Committee with amendments. But since the Business Advisory Committee represents the various parties and some Independents in the House, the House has no difficulty in accepting its report. In case there is a discussion on the report in the House, not more than half an hour is allowed for such discussion and each member is given not more than 5 minutes to speak. Once the House has accepted the report, no change in the allocation of time as provided in that report is made except on the request of the Leader of the Hou[illegible] who notifies orally to the House that there is general agreement for such a change. This is enforced by the Speaker after taking the sense of the House. Soon after the House has accepted the report, it is notified in the Parliamentary Bulletin.

Another Sessional Committee is a *Committee on Rules* with 15 members nominated by the Speaker with the speaker himself as its chairman. This, too, includes representatives of various political opinions in the House. Its function is to consider matters of procedure and conduct of business in the House and to recommend to the Speaker any amendments or additions to the rules of procedure and conduct of business in the House as may be deemed necessary. In the British House of Commons they have a Sessional Select Committee on Standing Orders.

The Committee on Petitions, again, comprises of 15 persons nominated by the Speaker who also appoints its Chairman from amongst the members. In case the Deputy Speaker is a member [illegible]

to the House stating the subject-matter of the petition, the number of petitioners who have signed it, and also stating whether it conforms to the rules and whether it has been circulated. It is one of the duties of the Committee to suggest remedial measures to remove specific complaints.

In England the *Committee of Privileges* is regarded as the most authoritative Select Committee, composed of ten experienced members of the House and including the Prime Minister of the

Leader of the House and the Attorney-General. In India in each House of the Parliament, there is a select Committee of Privileges. The question whether there has been any breach of privilege of Parliament in any case is referred to it. It has to report to the House with recommendations for action. The reference of the question of breach of privilege to the Committee of Privilege may be made by the Chair *Suo Motu* or at the instance of a member. Even if an individual member of the Parliament is affected by the alleged breach every member has a right to raise the question. Any question which involves a breach of privilege of a member, or of the House itself or a Committee thereof is a question of privilege. On a notice being given by a member to the Secretary that he wishes to raise a question the Chair has to decide if the question is admissible and is in order. If it is found in order the member is granted leave to ask for the leave of the House. On the leave being granted the House may either consider and decide the question itself or it may refer the question to the Committee of Privilege on a motion made either by the member who has raised the question of privileges or any other member. It may be noted that in one case (the Mudgal case) the Speaker ruled that instead of referring a case of breach of privilege to the Committee of Privileges, the House might refer [illegible]

[illegible]

of People. First, whereas the House may decide, as we have [illegible] above, the question of privilege itself, the Council cannot. The Council has to refer it to its Committee of Privileges. Secondly, whereas in the House the question can be raised by any member, in the Council the motion of reference to the Committee of Privileges can be made only by the Leader of the Council or any other member to whom he may delegate this authority. Again, the Committee of Privileges in the House of People, consists of not more than 15 members nominated by the Speaker who also nominates its Chairman from amongst the members. The Committee of Privileges in the Council of States consists of not more than 10 members.

So far as the question of privileges as between the two Houses is concerned, the position roughly is similar to that in England. In August, 1954 this question was referred to a Joint sitting of the Committees of Privileges of the two Houses and recommended a procedure which has now been adopted by both Houses.

In December, 1953, some other Committees were instituted in India. One of them was the *Committee on Government Assurances.* This was constituted by the Speaker with 6 members but it was subsequently enlarged and it now consists of 15 members. The functions of this Committee are to scrutinize the assurances, promises, undertakings, *etc.*, given by ministers from time to time on the floor of the House, and to report on (1) the extent to which such assurances, promises etc., have been implemented; (2) where implemented, whether such implementation has taken place

tribunal—both Judge and Jury rolled into one.[1] In case its report is unfavourable and "the preamble is not proved", there is an immediate end of the Bill. In India, the functions of the Committee on Private Member's Bills are wider though less decisive. In the first place, it has to examine all Private Member's Bills intended to amend the Constitution before a motion for leave to introduce the Bill is included in the list of business of the House. Secondly, it examines ordinary Private Member's Bills after they are introduced and before they are considered by the House. It has to classify them according to their nature, urgency and importance into two categories A & B. Bills classified under category A have precedence over those which are classified as category B. The relative precedence of Bills falling under the same category is determined by ballot separately. If, however, the Committee, for any reason, has not been able to classify the Bills, the order of such Bills in the List of Business is determined by ballot according to such rules as are made by the Speaker.

Further, the Committee has to recommend the time that is to be allotted for the discussion of the stages of each Private Member's Bill. It has to examine every private Member's Bill which is opposed in the House on the ground that the Bill lies outside the legislative competence of the House and such an objection is considered *prima facie* tenable by the Speaker. If the Speaker so chooses, he may assign from to time, any other function to this Committee. There is no such Committee in the Council of States.

One of the most important Sessional Committees is the *Com-* [illegible]

1944, a Select Committee has regularly been appointed every session to examine all those statutory instruments which need [illegible]

[illegible] Legislation was set up on December 1, 1953. It consists of not than 15 members (actually it [illegible]
nated by the Speaker for a [illegible]
tinize and report to the Hou[illegible]
Parliament have been prop[illegible]
of the statute delegating su[illegible]
should be annulled wholly [illegible]
respect, it reports its opinion and the grounds thereof to the House within one month of the commencement of a session of Parliamment after the promulgation [illegible]
later period which a stat[illegible]
specified case. Further, [illegible]
other matter relating to [illegible]

1 "It hears the cases, assesses the evidence, gives verdict, and decides the sentence."

of the House, it may report that opinion and matter to the House.

So far as financial matters are concerned, there are two Sessional Committees—the Committee on Estimates and the Committee on Public Accounts. The former is concerned with the

are elected by the House of People annually from its members according to the principle of proportional representation. It was set up on April 10, 1950. In the very first year of its inception, the Committee complained that its scrutiny was restricted and its usefulness curtailed by the exclusion of examination of policy from its terms of reference. In mid-summer 1953 the rule was amended to expand the scope of the Committee's examination, to suggest alternative policies in administration. This amplification encouraged the Committee to assume the functions of recommending improvements in organization of suggsting measures of efficiency in adminisitration as well. The Speaker issued a directive explaining the meaning of the term 'policy'. Policy as explained by him related only to policies laid down by Parliament by statute. In the course of its work, the Estimates Committee at Work has placed

It devotes a great deal of attention to the organizational aspect and to measures which would, in its opinion, provide that the money voted by Parliament was better spent. In its very first Report it touched upon the efficiency and organization of the Ministry which it had taken up for examination. The Second Report was devoted to the reorganization of the Secretariat of the Departments of Government. The subsequent reports also touched upon questions of efficiency and administrative reorganization. The Ninth Report was entirely devoted to the question of administration, financial and other reforms. Similarly the 16th report dealt with the organization and administration of nationalized undertakings.

The Public Accounts Committee was first set up in India in 1923. It consists of 22 members, fifteen from Lok Sabha and seven from Rajya Sabha. The Chairman of the Committee is appointed by the Speaker from amongst the Members of the Com-

Houses. Finally, it may be stated that in America, the Committee system rests on 3 basic principles. In the first place, the Senate and the House accept the recommendations of their Committee and rarely do they reject or overrule them. Secondly, the major political parties are represented on the Committees in proportion to the party strength in the respective Chambers. Finally, a member of the party in power, who has served longest on the Committee is normally given the Committee Chairmanship. Members of the Opposition party have ranked within party committee membership in order of length of service but do not have access to the Chairmanship. Nevertheless the voice of the Opposition is heard and often heeded in considering and voting on legislation.

In the U.S.S.R., the Supreme Soviet makes use of the Commissions on the Budget, Credentials, Foreign Affairs and Legislative Proposals. The Commissions preliminarily consider and prepare questions subsequently submitted for a final decision to the Supreme Soviet Chambers. The Standing Commissions have the right to initiate legislation. They are invested with the right to demand from departments and officials the presentation of documents and materials, written conclusions on questions pretaining to draft laws being elaborated. When considering draft laws or [illegible]

not members of the given Commission. A Standing Commission is accountable for its activities to the Chamber which elected it, and in the intervals between sessions, to the Chairman of this Chamber.

The Soviet parliament [illegible]
In February 1957, a sessio[illegible]
decision on the formation [illegible]
Soviet of Nationalities. Th[illegible]
upon to work out decisions on questions of economic and cultural development of the different Republics. The Commission is elected and comprises of a chairman and thirty members—two representatives from each of the 15 Union Republics. The Deputies to the Soviet of Nationalities take part in its work.

LAW-MAKING PROCEDURE : THEORY

In the formulation of legislative policy four main systems have been used. In the first place, it is possible that an Absolute Monarch may be in a position to impose his will, either directly or through

his subordinates on the Legislative Assembly. In this case, the Legislature will merely be a registration Chamber, whose only job will be to accept what it has been commanded to do either willingly or with feeble protest. This roughly was the position in the early stages of political development. Until recently in Germany, Austria and Czarist Russia this situation existed. In all totalitarian countries, the Director can get anything done by a subservient Legislature. This has been true of Fascist Italy and a militarist Japan. Secondly, in advanced political systems as in Britain, Canada, Australia and India, the will of the Legislature may be supreme and the executive is merely constituted to implement this will without much power of resistance. Here, the Legislature is effective. The Council of Ministers may initiate Legislative policies, may introduce bills on the floor of the Legislature and with the help of the majority which it has in the popular House it may secure the passage of a legislation. In this case a Bill is widely discussed by the People's representatives. It bears the hall-mark of public opinion; the Opposition parties may offer amendments which sometimes the government may even be compelled to accept. Thirdly, there may be a political system where power is balanced between the two Houses of the Legislature and also between the Legislature and the Executive, as in the United States of America. In this case, political parties through caucuses guided by the leading members of each House and by members of the Administration, determine legislative policy. If the Executive and both Houses are in harmony, consistent and active legislation is easy to secure; if not, legislation is either prevented or is secured only after a series of compromises. Finally, there are systems where legislative policy is not determined in a final sense by a Legislative Assembly. With the law-making process, people may also be associated, as in Switzerland. In such a situation the electorate, by means of initiative, referendum and special convention may seek to extend its authority over the whole field of legislation.

In modern times, it must be emphasised, society is becoming more and more complex. With the extension of frontiers of [illegible] ...tions *vis-a-vis* the State is [illegible] therefore, entering into [illegible] More and more people expect more and more things from the Government and the expectations are to be fulfilled sooner rather than later. This, at least, is true of those communities which have popular welfare as the most important objective of their government. Here the govern- [illegible] d attempt to [illegible] tax the people [illegible] art galleries, and through these, support the poor and the needy. The result is that in every society today there is not only a volume of laws made by the Judges, but there is also what is called as Delegated Legislation. We have considered both these in details in previous

Chapters. Today, ancient customs are getting more and more outmoded. The world is changing so fast and so much that legislation itself is bcoming revolutionary. This revolutionary legislation is based on the assumption that today there is very little that the citizen can do himself. This is an era of collective activity and more detailed regulation. And since the regulation is to protect and promote the common interest of the community as a whole, the fact that it curtails the freedom of one person or one class of persons, is no reason why regulation should not be made. A compulsory vaccination law, a quarantine regulation or a factory Act may interfere with the freedom of an individual to spread disease throughout the country, or a Company to exploit its employees or to compel them to work under degrading conditions, but it is justifiable if it is necessary for the safeguarding of the public health or the protection of factory [illegible] A Gold Regulation may curt[illegible] a few hoarders to make huge [illegible] it is necessary for national security and economic development of the country. Even confiscation of gold in a country like India will not only be perfectly justified but essential. It is a false notion of liberty to say that it embraces the right of an individual to spread a contagious disease throughout the country, or to require his employees in a factory to work under conditions which constitute a danger to their health or life. It is the right of the State to restrain such conduct just as it is the State right to repress and punish crime. No government has done its full duty to the people it it merely protects them against fraud, violence and crime, and leaves them exposed to economic, social or moral exploitations and to conditions that are dangerous to their health, their morals and their lives. There is no bad condition today which cannot be removed by wisely directed state action. The state has to be an instrument of economic and social progress, economic and social justice. It is on this logic that legislation in a modern state is based.

Here, however, we are concerned not with Judge-made laws or with delegated legislation and administrative laws. Here we are concerned with the laws made by the Legislature. Different Legislatures have their own law-making procedures but a few principles are universally accepted. In the first place, in almost all political systems today legislative initiative is taken by the Executive. This is true of Britain, India, Canada, Australia, and other Parliamentary democracies, but this is also true of a Presidential system like the United States of America. Secondly, in almost all the modern states, a law is thoroughly discussed in the Legislature. The rule of three readings is almost universal in countries which follow the principle of political democracy. Thirdly, all Legislatures without exception make use of Legislative Committees where the proposed bills are scrutinised in details. Again, in almost all the states Money Bills are introduced on the floor of the Lower House which has final powers with regard to them.

The Upper Houses with a few exceptions have only the powers of discussion as far as Money Bills are concerned. In almost all modern democratic states ordinary Bills can be initiated in either House in theory, but in practice more important Bills always originate in the Lower House. Most countries make distinction between Private Bills and Public Bills and between Government Bills and Private Member's Bills. Private Member's Bills have no chance of passage until they are actually supported by the Government of the day. The bulk of the time of Legislative Assemblies is occupied by Government Bills. Private Bills have little chance of passage unless they have the sympathy of the administration. All Governments having Parliamentary type of administration have their own legal Departments or Legal Remembrancers' Offices where the laws are drafted. Much of the ... ality of drafting. ... in a country like ... In democratic countries a Bill, before it becomes a law, is published in the Gazette to elicit public opinion. Finally, in all democratic countries, whether they are Parliamentary or Presidential no law can go into force until it has been ratified by the Head of the State. In Parliamentary democracies this power is only nominal as in Britain and in India. In Presidential systems like the United States of America, the Presidential veto can, at times, become decisive. It is in this background that we will briefly summarize the law-making procedures in different systems.

It was in *Britain* that the standard form of law-making procedure is found. But this is not the result of any pre-conceived plan or theory; like other parts of the British political system, this has also been a result of gradual development. A Bill is a draft Act of Parliament, and the passing of Bills is one of Parliament's chief functions. Most legislation is applied to Great Britain, or the United Kingdom, as a whole, but on some matters separate Acts are passed for England and Wales and for Scotland. The majority of public Bills, *i.e.*, Bills which have for their object some changes in the general law, are Government measures; they are drafted by a minister, with the help of his advisers, and, before being introduced, will have the support of the Cabinet. An unofficial Member of Parliament (*i.e.*, one who is neither an office-holder in the Government nor an Opposition leader) may also introduce a Public Bill. A Bill, printed by Her Majesty's Stationery Office on green paper, normally consists of (1) a short title which is the name by which it will generally be known; (2) a long title which summarises the various purposes of the Bill; (3) a preamble (nowadays rare in a Public Bill) which may contain a number of assertions about the desirability of legislating on a particular subject; (4) the

Chapters. Today, ancient customs are getting more and more outmoded. The world is changing so fast and so much that legislation itself is bcoming revolutionary. This revolutionary legislation is based on the assumption that today there is very little that the citizen can do himself This is an era of collective activity and more detailed regulation. And since the regulation is to protect and promote the common interest of the community as a whole, the fact that it curtails the freedom of one person or one class of persons, is no reason why regulation should not be made. A compulsory vaccination law, a quarantine regulation or a factory Act may interfere with the freedom of an individual to spread disease throughout the country, or a Company to exploit its employees or to compel them to work under degrading conditions, but it is justifiable if it is necessary for the safeguarding of the public health or the protection of factory workers against wrongful treatment. A Gold Regulation may curtail the freedom of a few jewellers or a few hoarders to make huge profits, but it is absolutely essential if it is necessary for national security and economic development of the country. Even confiscation of gold in a country like India will not only be perfectly justified but essential. It is a false notion of liberty to say that it embraces the right of an individual to spread a contagious disease throughout the country, or to requi e his employees in a factory to work under conditions which constitute a danger to their health or life. It is the right of the State to restrain such conduct just as it is the State right to repress and punish crime No government has done its full duty to the people it it merely protects them against fraud, violence and crime, and leaves them exposed to economic, social or moral exploitations and to conditions that are dangerous to their health, their morals and their lives. There is no bad condition today which cannot be removed by wisely directed state action. The state has to be an instrument of economic and social progress, economic and social justice. It is on this logic that legislation in a modern state is based.

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The Upper Houses with a few exceptions have only the powers of discussion as far as Money Bills are concerned. In almost all modern democratic states ordinary Bills can be initiated in either House in theory, but in practice more important Bills always originate in the Lower House. Most countries make distinction between Private Bills and Public Bills and between Government Bills and Private Member's Bills. Private Member's Bills have no chance of passage until they are actually supported by the Government of the day. The bulk of the time of Legislative Assemblies is occupied by Government Bills. Private Bills have little chance of passage unless they have the sympathy of the administration. All Governments having Parliamentary type of administration have their own legal Departments or Legal Remembrancers' Offices where the laws are drafted. Much of the [illegible] ity of drafting. [illegible] a country like [illegible] In democratic countries a Bill, before it becomes a law, is published in the Gazette to elicit public opinion. Finally, in all democratic countries, whether they are Parliamentary or Presidential no law can go into force until it has been ratified by the Head of the State. In Parliamentary democracies this power is only nominal as in Britain and in India. In Presidential systems like the United States of America, the Presidential veto can, at times, become decisive. It is in this background that we will briefly summarize the law-making procedures in different systems.

It was in *Britain* that the standard form of law-making procedure is found. But this is not the result of any pre-conceived plan or theory; like other parts of the British political system, this has also been a result of gradual development. A Bill is a draft Act of Parliament, and the passing of Bills is one of Parliament's chief functions. Most legislation is applied to Great Britain, or the United Kingdom, as a whole, but on some matters separate Acts are passed for England and Wales and for Scotland. The majority of public Bills, *i.e.*, Bills which have for their object some changes in the general law, are Government measures; they are drafted by a minister, with the help of his advisers, and, before being introduced, will have the support of the Cabinet. An unofficial Member of Parliament (*i.e.*, one who is neither an office-holder in the Government nor an Opposition leader) may also introduce a [illegible] rare in a Public Bill) which may contain a number of assertions about the desirability of legislating on a particular subject; (4) the [illegible]

ture of public money, it must have a financial memorandum. With this is also published, where deemed necessary, an explanatory memorandum. A Bill must pass through both Houses of parliament, and may originate in either, unless it deals with finance or electoral law, when it is normally introduced in the Commons. In practice, however, Bills which are likely to raise much party political controversy are normally presented first to the Commons. The First Reading of a public Bill is a formality. A Bill may be presented and read the first time as a result of the House agreeing to a motion for leave to bring in the Bill, or it may be presented on notice, without a motion for leave. Once presented, it is automatically ordered to be printed, and publication shortly follows. The further stages of the Bill are Second Reading, Committee; Consideration on 'Report', and Third Reading. The first main occasion for the debate of a Bill is the Second Reading, when it is usually introduced by the appropriate minister or Member-in-charge of the Bill on the motion, 'That this Bill be now read a Second time', and the debate is limited to a discussion of the principles of the measure. Detailed discussion, including criticism which could be met by minor alterations, is reserved for the Committee or Report Stages. Thus, the Opposition may decide not to vote against the Bill on the Second Reading but to introduce various amendments in Committee.

When a Bill has passed the Second Read... mons, it is then ordered to be ... of the Whole House' or ... formed for the purpose ... originally a device frame... conducting debates more informally ... Stuart time for the purpose of ... Whole House was in the Chair, the Mace, his symbol of authority, is taken from the table, and the Chairman of Ways and Means (who is also Deputy Speaker) or his deputy, the Deputy Chairman, presides over the Committee from the Clerk's chair. At present, the Committee of the Whole House is usually employed for discussing only the main financial Bills of the year, those which are of the highest constitutional or political importance, or those in which the Committee Stage is likely to be a pure formality.

In almost all other instances Public Bills in the House of Commons are committed to a Standing Committee. Standing Committees are held in the Committee rooms in the upper floors of the House, hence occasional reference in subsequent stages of debate to work done 'upstairs'. In Committee, a Member may speak as often as he wishes in the same debate, instead of only once, as on other occasions. The object of the Committee Stage of a Bill is the amendments of its individual provisions, and the measure is dealt with clause by clause. An amendment may take the form of an omission, an addition or a substitution.

When it has passed the Committee, a Bill has still to be considered in two more stages in the Whole House. These are the

Report Stage and the Third Reading. The Bill is formally reported to the House by the Chairman of the Committee, and the House then has an opportunity to consider the Bill as amended in Committee, and to make any further amendments as may be necessary. The House may at this stage, recommit a Bill in whole or in part to a Committee. After the Report Stage, the Bill reaches its final stage, the Third Reading, before being sent to the other House. A Third Reading debate deals with the Bill as agreed to in Committee and on Report. Only verbal amendments can be made at this stage. (There is no such limitation on Third Reading debates in the Lords). When the Bill passes its Third Reading in the Commons, an order is made that the Clerk of the House carry the Bill to the Lords and desire their concurrence. The Bill has now to pass a similar number of stages in the House of Lords. (If it has originated in the Lords, it must then go to the Commons). If there is no disagreement between the two Houses, the Bill is now ready for the Royal Assent. If the second House amends the Bill, it must be returned to the House where it originated for the consideration of these amendments. On each of them a resolution is passed: "That this House doth agree (or disagree) with the Lords-Commons in the said amendment.'

If the first House rejects the amendments made by the second House, a committee is set up to show the reasons for the disagreement, and a message embodying the reasons is sent to the second House. The amendments in dispute may then be dropped, or alternative ones adopted, and so the process continues until either agreement or a deadlock is reached. If such a deadlock arose the Government might apply the procedure laid down by the Parliament Acts, 1911 and 1949, by which a Bill which passes the Commons in two successive sessions becomes law, inspite of the House of Lords.

Also under the Parliament Act, 1911, the assent of the Lords is not essential, subject to certain conditions, in the case of Money Bills. A Money Bill, which must be endorsed by the Speaker to that effect, is defined as 'A Public Bill which, in the opinion of the [illegible] ly provisions...... [illegible] eration or regula- [illegible] to those subjects or any of them.' The definition is a narrow one, so narrow that [illegible] lls are certified as Money [illegible] ey Bills certified by the [illegible] month before the end of a session, and if not passed within one month, unless the House of Commons direct to the contrary, they receive the Royal Assent without the consent of the Lords.

[illegible] xation and amends [illegible] thorises expenditure [illegible] Fund. As a general rule, these Bills must be introduced in the House of Commons

upon Resolutions in a Committee of the Whole House (the Committee of Ways and Means) and they may be initiated only by a Minister of the Crown. The Chancellor's proposal for raising money by taxation is an old word meaning a bag containing papers or accounts. The use of this word in Public Finance originated in the expression "the Chancellor of the Exchequer opened his Budget," which was applied in Parliament to the Annual speech of the Chancellor of the Exchequer, explaining his proposals for balancing revenue and expenditure. The Budget Speech is the main occasion of the year for reviewing the financial state of the nation and its formal basis is the Chancellor's proposals for raising money by taxation. By the time the Budget is introduced (usually in April) the Estimates cf expenditure under various headings will have been presented to Parliament and published, and the expected total of Government expenditure for the year will be known. The Chancellor estimates the yield of the revenue [illegible] and proposes such changes in [illegible] surplus or deficit he considers [illegible] ese proposals are later embodied [illegible]

The Budget speech also gives figures relating to certain payments of a capital nature for which the Government has statutory power to borrow and which are, therefore, excluded from the Budget expenditure and met from revenue. These items and others are set out in the part of the Budget which lies 'below the line'. Items ,below the line' are: (1) receipts applicable by statute to debt interest which would otherwise be paid out of revenue; (2) receipts applicable to debt redemption; and (3) payments for which the Treasury has power to borrow.

The original purpose of the Budget was purely financial—to provide money for Government expenditure. From an early stage, however, it was appreciated that taxation would affect the distribution of income and property and the level of ependiture on particular goods and services. At a later period it was realized that taxation also affected the nation's total expenditure and, therefore, the several level of economic activity. Since the Second World War, Budgets have been consciously designed in greater or lesser degree to bring the total demand for goods and services into balance with the supplies which could be made available.

When a Bill has passed all the stages it is ready for the Royal Assent which is given in the House of Lords. The last occasion on which it was given by the Sovereign in person was on August 12, 1854. The Queen is represented by Lord Commissioners, who sit in front of the throne. At the bar of the House of Lords, stands the Speaker, with other members of the Commons, and the Reading Clerk of the House of Lords reads out the Commission which authorises the assent to be given. The Clerk of the Crown then reads out the title of each Bill, and the Clerk of the

result is that the quest for private bills has grown less, and the issue of orders has increased. The order is, however, provisional; it cannot be acted upon until it has received Parliament's approval. Hence, it is termed provisional. Several provisional orders are collected in the form of a bill, and the bill is introduced in Parliament on behalf of the Government. The Act which confirms these orders is called Provisional Orders Confirmation Act. Its passage through Parliament is not usually opposed. If there is opposition in any case, the bill is referred to a select committee. The chances of its being defeated are, however, negligible. It should be noted that Parliament does not pay the same attention to such bills as they deserve. Here is an instance of Parliament assuming a task which it does not properly perform.

In *India*, the law-making procedure largely follows the British pattern. At the commencement of each session or as soon as possible thereafter, a statement of Government Legislative business (not to be taken as exhaustive) is published for the information of members. The Speaker, on request being made to him, may order the publication of any Bill in the Gazette. In that case, it is not necessary to move for leave to introduce the Bill. If the Bill is afterwards introduced, it is not necessary to publish it again. Any member other than a Minister, desiring to move for leave to introduce a bill, gives notice of his intention, and together with the notice, submits a copy of the Bill and an explanatory statement of objects and reasons. As soon as a Bill has been introduced, it is published in the Gazette. This constitutes First Reading. An Ordinary Bill can be introduced by any member after giving a notice of one month. The notice is to be accompanied by text of the Bill. If a Bill seeks to redistribute or alter the boundaries of a State, the previous sanction of the President is required. If the introduction of the Bill is opposed, the Speaker, after permitting a brief explanatory statement from the member, who moves and from the member who opposes the motion, may, without further debate, put the question. Where a motion is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion thereon.

As regards the second reading, the mover of the bill may adopt any of the three alternatives. He may move that the bill be taken into consideration by the House at once or on some future date specified in the motion. He may move that the bill be referred to select committee. Lastly, he may move that the bill be circulated for eliciting public opinion on the desirability or otherwise of the bill. It is in very rare cases that the bill is taken up for consideration at once unless the same is non-controversial or very urgent. In the case of controversial legislation, bills are usually circulated for finding out the public opinion on the subject. The usual procedure is to refer the bill to a select committee. During the second reading, the underlying principles

of the bill are discussed by the members of the House. Those who are in favour of the bill emphasize its merits and those who oppose it point out its shortcomings. There is no detailed discussion of the provisions of the bill. There is no occasion for the moving of amendment. The bill is discussed as a whole and its basis agreed upon.

When the basis of the Bill has been approved it enters the third stage known as the Committee Stage. A Bill is usually referred to a Select Committee, which includes among others, the Member Incharge of the Bill and the Law Minister; who is an ex-officio member. During the Committee stage, the Bill is thoroughly discussed clause by clause and the Committee may recommend any change it likes. This is the most important stage in the journey of a Bill. The Committee then reports the Bill to the House and the Bill enters the fourth stage—the Report Stage. Each member of the Committee can write a separate report but usually there is a majority report and a minority report. The entire proceedings of the Committee are published and placed before the House. When the report has thus been presented to the House, the Member Incharge of the Bill can move that the Bill as reported by the committee be considered or that the bill as reported, be sent back to the Committee with or without instructions, or that the bill as reported may be circulated for eliciting public opinion. If the House agrees to consider the Bill as reported by the Committee, the discussion of the Bill is taken clause by clause. The members of the House can propose amendments which the Speaker may allow or disallow. Votes may be taken after every clause. When the Bill has thus been considered, it enters the Fifth stage—the Third Reading. At this stage only verbal amendments can be allowed. If the Bill is passed by a majority of the members present and voting, it is said to be passed by the House after it has been authenticated by the Speaker or by the Chairman of the Rajya Sabha or in some cases, by the Secretary of the House, it is sent to the other House.

Here also all the five stages have to be gone through. When [illegible]

send back the Bill for reconsideration of the Parliament or even refuse his assent or delay his assent. When a Bill is returned to the Parliament with a recommendation or modification and is passed by Parliament again with or without those modifications, the President can no longer withhold his assent. But there may be situations when the President neither gives his assent nor sends it back for reconsideration, nor finally withholds it—he just sleeps over it. Similarly under Article 368 of the Constitution, no Constitution Amendment Bill can go into force unless it has received the assent of the President. The President, in this case, has a real power of shelving a Bill. But these are all theoretical possibilities.

In a Parliamentary democıacy the President cannot impose his own will on the expressed will of the Legislature.

With regard to the procedure in financial matters, it is provided in Article 112 of the Indian Constitution that an Annual Financial Statement containing the estimated receipts and expenditure of the Government of India for a financial year shall be laid before both the Houses of Parliament. The estimates of expenditure show separately the charges upon the Consolidated Fund of India and the sums required to meet other expenditure. It also distinguishes expenditure on revenue account from other expenditure. The emoluments and allowances of the President, the Chairman and Deputy Chairman of the Rajya Sabha, the Speaker and the Deputy Speaker of the Lok Sabha, the Judges of the Supreme Court and the High Courts, the Comptroller and Auditor-General, the Debt charges for which the Government of India is liable, any sums required to satisfy any judgment of a Court and any other expenditure declared by the Constitution; or by Parliament are all charged on the Consolidated Fund of India. These charges are not submitted to the vote of Parliament. The estimates for other expenditure are submitted in the form of demands for grants to the Lok Sabha, but no such demands can be made except on the recommendation of the President. When the [illegible]
duced to [illegible]
Fund of [illegible]
by the H[illegible]
Consolidated Fund of India. No amendment can be proposed in such Bill in either House of Parliament which has the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India If the amount authorised by the Appropriation Act is found to be insufficient, the President has to lay before the Parliament another statement showing the estimated amount of expenditure. The Constitution also provides for supplementary, additional or excess grants, and for votes on account, votes of credit and exceptional grants. Usually the Budget Session of the Parliament, meets in the third week of February and lasts till the first week of May. The Union Budget is generally presented on February 28 and the grants are passed by the end of April. Since the financial year begins on April 1, the expenditure from 1st April till such date when the Budget is passed, has got to be sanctioned by the Parliament in the form of votes on account.

The basic principles of financial procedure may now be summarised. In the first place the legislature examines the estimates prepared by the Government Departments and provides supplies to them. Secondly, it is the Parliament which has to decide the ways and means to provide the necessary funds for the purpose and to determine what new taxes are to be imposed and which old ones reduced or abolished. Thirdly, the Parliament scrutinises and

examines the ways in which funds granted by it have been spent. Finally, the Parliament ensures that the accounts maintained by the spending departments are properly audited. In performing these functions, the Parliament can examine the entire financial situation of the country and control the whole machinery of administration. The main features of the financial systems in *India* are: (*a*) the initiative in finance rests in the hands of the Executive. The whole financial programme is prepared as one unit, the full responsibility for which rests upon one single authority, namely the Cabinet. For both parts of the Budget—the Appropriation estimates as well as the Revenue estimates—it is the Finance Ministry, which is responsible (in Britain, Chancellor of the Exchequer), (b) Both parts of finance are controlled by the Parliament. All demands for grants and all proposals for taxes must come from the Government. No vital changes can be made in the Budget without the consent of the Government. It can be different in the United States of America, as we will shortly see. (*c*) In both Britain and in India, the Parliament can cut down the estimated expenditure in theory, but it cannot increase it. Every proposal involving fresh expenditure is subject to the approval of the Government and no item can be added to which the government objects. (*d*) Charges on the Consolidated Fund of India are beyond the control of the Parliament. Ultimately, of course, the Parliament can alter these charges by laws. (*e*) In both countries the financial proposals are thoroughly scrutinised in the Committees of Parliament.

In *Canada and Australia*, there is not much substantial difference in the law-making procedure and the pattern of the United Kingdom prevails. The Royal Assent in these countries is signified by the Governor-General on behalf of the Crown.

There are, however, some variations in the rules of procedure used in Britain and in Canada and also in the way in which the same rule is applied. In broad terms it may be stated that the majority party does not keep as tight a rein on the House as in Britain. Debate in Canada is more prolix. A form of closure was introduced in 1913 but it has rarely been used. The Canadian Cabinet does not insist on the House of Commons working to a time-table with the result that in World War II, the House found themselves unable to give anything like adequate attention to the conduct of the war. Even in peace time the end of a session always finds the House rushing through important business without giving it careful attention it deserves. Debate in the House is hardly rationed but the House has always managed to get through the work of a session somehow. Political parties have never had thus far such extensive party programmes to be implemented as the parties in Britain. Party discipline, moreover, will not bear as much strain in Canada as in Britain and there would probably have to be an extreme congestion of business in the House before the Canadian Cabinet could enforce a rigid

time-table in times of peace. In short, it is clear that the majority everywhere has procedure within its control and can always enforce its will by drastic methods. It is a different thing if drastic action is not often openly resorted to, although the threat of it is always there. Both the ruling party as well as the opposition know that they are participating in a system of deliberation that will not work without give and take. Thus, changes in the order of business and limitations on the time of debate are often made by management between the leaders of the parties. What is true of Canada is also applicable, mutatis mutandis, to Newzealand. In Newzealand a bill can be referred for the signification of the Royal Assent by the Sovereign. For example, the Shipping and Seamen Amendment Bill 1946 was so reserved, because it had extra-territorial effect.

In the *United States of America*, as a beginning, a bill or resolution must be introduced in the House or Senate by one or more of its members. It must be referred by the presiding officer to an appropriate legislative committee for consideration. This Committee must consider it and reach a decision to (*a*) report it favourably to the parent body, recommend passage, and thereafter support it if necessary in debate; (*b*) report it unfavourably and oppose it on the floor if others should try to have it passed; or (*c*) take no action and allow the measure to die a natural death in the

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on revenue bills until received from the House. Should the Senate

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two bodies, and an effort made to reconcile the differences. When the conferees have done this, they report their agreement

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President's signature has been passed in identical form by both houses of Congress, it is sent to the President for his approval or disapproval. If he approves and signs it, the measure becomes a law. Should he take no action on it within 10 days, while Congress is in session it still becomes a law without his signature.

Should he veto it and send it back to Congress with a statement of his reasons or refusing to sign it, Congress may, if so disposed, enact it into law over the President's objections. This process requires a two-thirds vote of members present and voting in both Chambers of Congress, assuming the presence at the time of a quorum of more than half of the entire membership. In voting to override a veto, the two branches act separately, as in the original passage of the measure. Thus Congress has both the first and last word on all legislation.

This does not imply that Congress alone can initiate legislation. Although it controls the legislative process, as well as the final decision, the initiative in preparing legislative measures or urging legislative programme may come from others. Business, labour or farm oranizations, bar associations or medical societies, patriotic or philanthropic or chuch groups, organizations representing tax-payers or any other segment of the population may come forward at any time with legislative programmes of their own, and find champions in Congress. In recent years also, it has become the custom of executive agencies of the government to have measures in which they are interested drafted by their own specialists. The executive drafts may be sent to Congress by the President, any member of his Cabinet, or by the agency concerned. When this happens, the Chairman of the Congressional Committee having jurisdiction will normally introduce the bills so received. In addition, of course, any legislator, acting alone or for himself and others, may introduce any legislative measure at any time in the legislative chamber of which he is a member. But no matter where it originates or what its importance or sponsorship, all legislation must follow the same road to enactment.

Generally speaking, legislation in Congress has the best chance of enactment if it falls into one of two categories: (1) 'must' bills (meaning they 'must' pass) having the active support of the President and leaders of his own party in Congress, if it happens to be the majority party. Such measures are given priority by the party leadership in both branches of Congress. (2) Non-controversial public legislation of other sorts which has substantial support on both sides of the party aisle, or private bill which can be passed by unanimous consent. It is customary in Congress to speak of 'public Bills' and 'private Bills'. This is simply a convenient desig-

bills and resolutions are in the nature of general legislation, while

private bills partake of the character of special legislation. Many private bills, for example, are introduced and passed to give equitable relief to individuals who have suffered injuries or loss of personal property for which the government is morally responsible, but who have no other remedy at law. By far the larger number of private bills in these days, however, authorize the admission of individual immigrants or small groups of immigrants outside of the regular immigration quotas as prescribed by the Immigration and Nationality Act (the McCarran-Walter Act). Where the circumstances are considered to warrant this special consideration, such measures generally are approved by Congress and signed by the President. Characteristic private immigration bills may provide for admission to the United States for permanent residence of persons who have fled from communist countries under dramatic circumstances to find refuge in "the free world", or who are already in the United States on a temporary basis and cannot return to the country of [illegible] imprisonment. Whatever the [illegible] of the Senate and the House reac[illegible] merits of each case and the two [illegible] accept the committees' decision [illegible]. Private bills seldom become laws except by unanimous consent. They are passed, as a rule, when the Senate and the House consider legislation requiring unanimous consent for action. A single objection by any member of either branch of Congress is sufficient to block consideration of such a measure when so reached, and the member need not give the reasons for objecting. In form there is no difference between public and private bills. We may now say a word about the actual procedure used in the United States.

In the United States, Bills considered desirable by the President are drafted in the government departments and introduced into one or other Chamber of the Legislature by a member of the Congress who is of the President's political party. Today, the bulk of legislation that comes up before the Congress, is initiated by the President, although the Congress can also consider many measures which are not inspired or even favoured by the executive. Any member may introduce a bill and the committees have often proposals before them that they wish to put in the form of a Bill looking towards the legislation. At one time the Congress itself was responsible for drafting, but a few years ago, provision was made for the appointment of legislative counsels as officers of Congress to draft bills for the Committees and members of the [illegible]

immediately referred to the Appropriate Committee. In the Senate, first and second readings are perfunctory and are given at the same time before the bill goes to the Committee. It is here (in the committee)that the real discussion on the bill takes place.

ensures substantial continuous legislative control over administration. A similar procedure is followed in the Committee on Appropriations in the Senate to which appropriations as passed by the House, are reported. Thus, it happens that all estimates for expenditure pass through and have to be approved by a single Committee of each House. The House Appropriations Committee can reduce some items in the executive proposals and can increase others. In fact large sums may be added by the Appropriations Committee to the proposals of the executive. "Pork is still distributed from the pork barrel".

An interesting feature of the finance bills in the United States is that the Appropriations Committee of the House of Representatives does not draw all the appropriations it recommends into a single Appropriations bill. On the contrary, it sends forward to the House one after the other about a dozen bills, endorsing apropriations for the various committees and agencies. Only minor changes in those bills are made by the House. After the Appropriations bills have been passed by the House, they are sent to the Senate whose Appropriations committee can always make substantial modifications and additions. Sometimes it happens that the entire issue is re-opened in the Senate Committee and government departments or private interests, who were dis- [illegible] mittee of the two Houses is appointed to find out a compromise to which both Houses can agree.—After an agreement has thus been reached, the bills get their final readings in both Houses and are sent up to the President for his signatures. In the United States even if the President is strong, Congress may seriously distort the budget as proposed by the President both by reductions as well as additions. "The Appropriations for one of his cherished projects may be cut and his pledges of economy thwarted. He has the power of vote but Congress rarely gives him chance to use it. Appropriations known to be obnoxious to him are attached as riders to appropriation bills covering vitally important votes of money. As he cannot vote particular items in a bill but must accept it or reject it as a whole, he has little choice but to accept. The unified responsibility of the British system is still lacking."

The taxation proposals made by the Bureau of the budget are examined [illegible] the Financ[illegible] provides th[illegible] sentatives, [illegible] in the form of amendments to the revenue measures passed by the House of Representatives. Both Houses can always introduce

material changes in the taxes proposed by the President. Officials, tax-payer's representatives, and other interests press forward their case and there is plenty of log-rolling and the push and pull of a great variety of interests. Similarly, the main lines of tariff legislation are fixed by complex bargaining between agriculture, labour and industry. As one authority has put it: "the tariff as made by the Congress, is not a matter of party policy or executive leadership but of bargaining between a continental array of interest". In short, the President can never depend on getting the kind of taxes he wants or the appropriations he recommends. While the executive prepares the budget as a whole, the Congress divides it in parts and acts on them without considering them as a related whole. The President's budget message is submitted in January each year and the congressional action on it is not completed before the beginning of the fiscal year which starts on July first. Thus, the budget, as originally passed, does not have the compelling unity of the British Budget where the governmental majority will ensure that the whole thing goes through pretty well as originally presented.[1] An element of order was sought to be introduced into this chaotic situation by the Legislative Re-organization Act of 1946. This Act provided that at the beginning of each session the Appropriations Committees and the Finance Committees of both Houses shall meet jointly and prepare a report to the Congress not later than February 15 on the proposed budget for the coming year. It was also provided that if the estimated expenditure exceeds the estimated revenues, the resolution introducing the budget in the Congress must contain a clause requiring the public debt to be increased by an amount sufficient to bring the two totals into balance. But this law actually has not so far been implemented and the pork barrel legislation continues to make a properly planned budget impossible. The Law of 1921, to which we referred earlier, set up the office of the Comptroller-General, who is appointed by the President for 15 years and who cannot be removed except by impeachment and conviction or by a joint resolution of both Houses of Congress. His principal duties are (1) to decide whether particular expenditures proposed by the executive departments have been properly authorised by the Congress; and (2) to investigate and audit all branches of public accounts and to report the results of his investigations to the President and to the Congress. The Congress, however, has not had active Standing Committee on public accounts. Investigations in finance have been made by special Congressional Committees of an *ad hoc* nature. The Act of 1946 provides that the Standing Committees of both Houses on expenditures and also the

ields of legislative-executive

pervision over the work of

Finally, we may consider the law-making procedure in *France*.

[1] Max Beleff : *The American Federal Government*, p. 150.

Initiative in legislation can be taken either by the Premier or by the members of parliament. As we said earlier, Government bills are discussed in the Council of Ministers after consultation with the Council of State and are filed with the Secretariat of one of the two Houses of Parliament. Financial Bills can be initiated only in the National Assembly. The bills and amendments thereto as introduced by the members of Parliament may be declared as inadmissible if their adoption "would have as a consequence either a diminution of public financial resources or the increase of public expenditure". The Government may also declare a bill inadmissible if it appears in the course of legislative procedure that it is not within the domain of law. If on this point. there is a conflict of opinion between the Government and the President of the house concerned the Constitutional Council, upon the request of one or the other, has to rule within a time-limit of 8 days. The house discusses the bills as presented by the Government to it or as transmitted to it by the other house. The Constitution recognises the Committee system and Government and Parliamentary bills are, at the request of the Government or of the Assembly concerned, sent for study to committees specially designated for this purpose. Government and Parliamentary bills

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the Government may oppose the examination of any amendment which has not previously been submitted to committee. If the Government so requests, the house concerned has to decide by a single vote, on all or part of the text under discussion, retaining only the amendments proposed or accepted by the Government. Every Government or Parliamentary Bill is examined successively by the two houses of the Parliament with a view to securing an identical text. But there is a possibility of deadlock caused by differences of opinion between them. Article 45 provides for a method of resolving the stalemate. When as a result of disagreement between the two Assemblies it has been impossible to adopt a Government or Parliamentary bill after two readings by each Assembly, or if the Government has declared the matter urgent after a single reading by each of them, the Premier shall have the right to bring abo[illegible] composed of an equal numbe[illegible] th the task of proposing a text [illegible] The text [illegible] may be submitted by the Assemblies. No amendment [illegible] ement with the Government. If the [illegible] common text, [illegible] the G[illegible] and l[illegible] In th[illegible]

elaborated by the Joint Committee, or the last text voted by it, modified when circumstances so require by one or several of the amendments adopted by the Senate. Thus, the National Assembly has the final word in matters of legislation. The role of the Senate is secondary.

As far as the organic laws are concerned, we have already discussed the procedure by which these may be enacted. With regard to the finance bills, the Parliament passes them on the conditions stipulated by an organic law. Here too the relative superiority of the National Assembly is ensured, although it must be said that ultimately the Government can have its own way. These two features are clearly brought out in Article 47 which is not expertly drafted. Should the National Assembly fail to reach a decision on first reading within a time limit of 40 days after a bill has been filed, the Government refers it to the Senate, which must declare within a time limit of 15 days. For the rest, the procedure used for ordinary laws is followed But should Parliament fail to reach a decision within a time limit of 70 days, the provisions of the bill may be enforced by ordinance. Thus seen, the annual budget can be enacted by ordinance. These time [illegible]

[illegible] mulgated before the beginning of that fiscal year, the Government can "urgently request the Parliament for the authorization to collect the taxes and shall make available by decree the funds needed to meet the Government commitments already voted". The Audit Office assists the Parliament and the Government in supervising the implementation of the finance laws. Finally, in all matters, the bills filed or agreed upon by the Government are given priority on the agenda of the Assemblies in the order determined by the Government. One meeting a week is reserved. by priority, for questions asked by members of Parliament and for answer by the Government.

PARLIAMENTARY PRIVILEGES

Parliamentary Privilege has been defined as the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. This privilege, though part of the law of the land is to a certain extent a departure from the ordinary law. Certain rights and immunities, such as freedom from arrest or freedom of speech belong primarily to the individual members of each House and only secondarily and indirectly to the House itself; but the [illegible]

tive authority than to the security of the individual members may be said to belong primarily to each House as a collective body.[1] The privileges of the House of Commons in Britain are different from those of the Lords. The former have been defined as the sum of the fundamental rights of the House and of its individual

have always enjoyed special privileges as peers distinct from those which they enjoy, together with the Commons, as members of Parliament. Thus, in Britain, privilege falls into 3 categories: (*a*) which apply to members of Parliament individually, (*b*) to each House collectively and (*c*) to both Houses jointly. It must be remembered that there cannot be a final definition of Parliament privilege. In Birtain, they have grown and developed gradually and this growth has centred round the long-drawn out battle between the monarch and the Commons. At the commencement of every Parliament the Speaker on behalf of the Commons claims the ancient and undoubted rights and privileges—freedom from arrest, freedom of speech in debates and the right of access to the Sovereign. These privileges are conceded by the Lord Chancellor on behalf of Her Majesty. The object of privilege is to protect the rights and dignities of Members inside Parliament to the extent necessary to enable them to do their duty. It forms a special kind of law—its own law, interpreted and administered by itself within the walls of Parliament, but acknowledged and recognised every where as part of the law of the land.

The most important privilege is freedom of speech. When a Member is speaking to his fellow Members, he enjoys a complete right of free speech subject only to the rules of Order administered by the Speaker. A Member cannot be prosecuted for sedition, or sued for libel or slander in respect of anything said during proceedings in the House or published on its Order Paper. This means that it is possible to raise in the House questions affecting the public good which might be difficult to raise outside owing to a possible threat of the law of defamation. Such privilege is not a mere personal favour to the individual Member, but a necessary protection and a guarantee that he should be able to defend to the full the interests of the electors. Thus the privilege of Members is to be regarded as the privilege of every citizen.

Parliament has the
outside the House, wh
of offending against t
alleged breach occurs,
at the earliest opportu
business. The Speaker then decides whether or not a *prima facie*

1 Sir Thomas Erskine May: *Treatise on the Law, Privileges, Proceedings and Usages of Parliament*, 16th Edition (1957), by Sir Edward Fellowes and T. G. B Cooks, pp. 42-44.

case of breach has been made out. If he decides that it has, then the matter retains its precedence and no other business can be transacted until the House has either forthwith dealt with the alleged breach itself or referred it to the Committee of Privileges' This is a small committee, consisting of members of long parliamentary experience, who investigate the matter, and, after the accused has been summoned and interrogated make a report on it. If the accused admits the offence, but offers a sufficient apology, the committee usually recommends that it be accepted. The House then considers the committee's report and decides whether the offender should be punished.

Parliament claims the right to punish not only breaches of its privileges, but 'contempt' which is an offence or libel against its dignity or authority. An offender may be detained within the precincts of the House, though this punishment has not been employed since 1880. In recent years the House has contented itself with directing offenders to be reprimanded. An offender who is not a Member of the House is brought to the Bar by the Serjeant-at-Arms, and is there reprimanded by the Speaker in the name, and by the authority, of the House. If the offender is a Member, he receives the Speaker's admonition or reprimand standing in his place. As an alternative to imprisonment, an offending Member can be expelled or suspended from the House. Offenders are ordered to attend at the Bar of the House, and are heard in extenuation of their offences or in mitigation of their punishment, before the House decides what action to take.

The privileges of the House of Lords are: freedom from civil arrest for peers, as for Members of the House of Commons; freedom of speech in debate; freedom of access to the Sovereign for each peer individually; and the right to commit for contempt. These privileges are not formally claimed by the Speaker as in the House of Commons; they exist independently without grant.

In India, Parliamentary privileges are covered by Article 105, which provides that (1) subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament; (2) no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings; (3) in other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commncement of this Constitution; (4) the provisions of clauses (1) (2) and (3) shall apply in relation to persons who by virtue of this Constitution have

the right to speak in, and otherwise to take part in the proceedings, of, a House of Parliament or any committee there as they apply in relation to members of Parliament.

It is thus clear that as in Britain, so in India, privileges of the Parliament include freedom from arrest, freedom of speech, the right to exclude strangers, the right to control the publication of debates and proceedings, the right to decide contested elections, and the power to punish members and outsiders in contempt and the right to regulate its proceedings. The privileges in our country [illegible] the Legislative Assemblies of the States. In the case of Shri Mudgal, which was examined by a Committee of the Parliament, the Parliament found his conduct derogatory to the dignity of the House. On September 24, 1951, the Prime Minister moved a resolution to expel Shri Mudgal from the House. The resolution was passed. In the case of Shri Desh Pandey (1952) the Committee of Privileges found that the privileges claimed by the member did not extend to the detention under the Preventive Detention Act and, therefore, his arrest did not constitute a breach of the privileges of the House. In the case of the *Times of India* the Committee of Privileges found the Editorial "contemptible" exceeding the bounds of decency. The Editor and the paper were held guilty of contempt and since the Editor did not publish an unconditional apology, the Press facilities were withdrawn from the said newspaper. In the case of the Editor of the *Blitz* Mr. R. K. Karanjia, the Editor was found guilty of breach of privilege and was summoned at the Bar of the House to be reprimanded. On August 29, 1962, for the first time in the [illegible] functioned as [illegible] reprimand to [illegible] April 15, 1961 [illegible] "Kripaloony Ir[illegible] in its tenor an[illegible] House and caused reflection on him......and referred to him in a contemptuous and insulting manner". After the reprimand the Speaker ordered Mr. Karanjia to withdraw from the House, which he did after bowing to the Sabha. In this case the reprimand had been administered after a writ petition filed by Mr. Karanjia had been dismissed by the Supreme Court of India. The Supreme Court, citi[illegible] decided that no citizen can claim [illegible] of speech, if he deliberately vi[illegible]ties of the Parliament itself.

The undefined privileges of the Legislature can, in theory, constitute a serious infringement of the fundamental rights of the Individual. There is, therefore, a demand in this country that the time has now come when the Parliament must define its pri-

vileges, for the citizen's rights are more important than anything else. On the other side, it is argued that the Parliament must have enough powers to safeguard the dignity and prestige of the supreme Legislative authority of the country. Within the four corners of the House, the House is supreme and all proceedings are beyond the powers and jurisdictions of the Courts. As Mr. Justice Stephen stated in *Bradlaugh* v. *Gosst* that "no precedent has been or can be produced in which any Court has even interfered with the internal affairs of either House of Parliament, though the cases are no doubt numerous in which the Courts have declared the limits of their powers outside of their respective Houses......... It seems to me that if we were to attempt to erect ourselves into

we should consult

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atters of contempt,

the House whose contempt is alleged to have been committed, has excessive jursidiction to commit and it is beyond the scope of the Courts of law to interfere. This roughly is the position of privileges in all countries which follow parliamentary democracy. The general objective of the privileges is to enable legislature to secure adequate ventilation of grievances through examination of legislative proposals and reasonable scrutiny of administrative acts. They are necessary conditions of every free legislature so that it may efficiently perform the task undertaken by it on behalf of the nation. Even rights of citizens have to be curtailed so far as necessary for this purpose and even parliamentary misbehaviour has to be punished. A legislature may have to suspend or expel its own members in order to preserve its dignity. The outsiders cannot, therefore, claim any exemption.

CONCLUSIONS

We may, thus, conclude that the Legislature is by far the most important element in the political process. It is not only responsible for making of the laws, but is in a sense the reservoir of the community's wisdom, a store-house of experience and a notice board where the popular aspirations can be gleaned through. A legislature is a sample of the political consciousness of a community. It is a clearing house of the nation; it is the most responsible talking shop and is the only alternative to the concentration camp. An active legislature is a sure guarantee of the democratic process; a subservient legislature is the hall-mark of slavery. An effective legislature will function as an impenetrable barrier against militancy,

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[1] Feb. 9, 1884. Quoted in 1884, Vol. XII, *Queen's Bench Division*, p. 271.

fearlessness, which alone can keep them above temptation and their readiness to identify themselves not with a sectional interest but with the interests of the nation as a whole. A legislature must function as an instrument of social direction and its process has to be constantly adjusted to varying needs. The most basic and the most precious element in the concept of Parliament is Government by discussion, by arguments which might clash no doubt but which lead to binding conclusions. If a Parliament were to place an

[illegible]

of political wisdom. The legislature, therefore, has to function as a parental authority in society, as a monitor to the people. But it can easily become an instrument of tyranny. As we stated earlier, of all the tyrannies, the tyranny of majority is the worst, for it has the sanction of democracy. That emphasises the need of an effective Committee system, an alert opposition and a vigilant [illegible] Even in Marxist theory the [illegible] for it can have a very powerful [illegible] ical forces. He will be a bold [illegible] the British Parliament as an instrument that can serve only bourgeosies interests. As Mr. Hiren Mukerjee put it: "We live today in a world where war is being sought, seriously and strenuously, to be outlawed, where it is being increasingly envisaged that in the process of the peaceful, albeit competitive, co-existence of socialism and capitalism the former will triumph. After World war II and after socialism having been clasped to their heart by nearly one-half of the world's population it is permissible, perhaps, to hope and work for revolutions from which both bloodshed and suppression of opinions will virtually be absent. Wherever, therefore, the parliamentary system has strength and vitiality and links with the people, they cannot be spurned and cast aside. One has always to bear in mind that there [illegible] that [illegible] strug [illegible] parli [illegible] sphe [illegible] will [illegible] heights which the promixity of the goals of socialism have brought within the people's reach".

Finally, it may be said that a legislature will be the best instrument of putting an executive under those restraints without which it may reduce itself to the level of Courts of Star Chamber. It is the supreme guarantee of those inalienable rights of the individual without which his life will not be worth living. It is that political device which supplies living nourishment to the entire machinery of Government. The Late Lord Bryce used to say that "if you wish to see the glory of a democracy, go and sit in the visitor's gallery in its legislature". Here, differences are talked out,

decisions are taken, ambitions are fufilled and an expression is given to those basic urges, which alone constitute the salt of life. If the salt loses its flavour, there is nothing with which you can salt the salt; if a legislature loses its vitality, a society has no redemption.

10

THE EXECUTIVE

The Executive is that branch of Government, whose principal function is the enforcement of the policy of the State and implementation of laws enacted by the Legislature. In a broad sense it consists of all Government officials with the exception of those who are working in a legislative and judicial capacity, that is, the totality of all the functionaries and agencies which have anything to do with the execution of the will of the State, as formulated and expressed in terms of law. It symbolizes the power of the State in a general sense. It connotes the police, the armed forces, the [illegible]

[illegible]

the executive Department of the State. To co-ordinate the policies of all the departments, there will have to be a group of persons commonly called a Cabinet or Council of Ministers, which contains a select coterie of usually senior Ministers, some of whom may be formally incharge of Departments. In some cases, as in England, India, Canada and Australia, this Council of Ministers is appointed by the Head of the State, who, in Britain, is a hereditary Monarch, in Canada and Australia, a Governor-General formally appointed by Her Majesty the Queen of Britain, and in India a President elected indirectly. Sometimes he is called as the nominal or the formal Executive. His accession, tenure, powers and relation to other organs of Government differ in different States. In some other states, as in the United States of America, the Head of the State may also be the Head of the Government and in this situation, the Cabinet becomes an agency of the Head of the Government. In Parliamentary types of Government, the Council of Ministers, although formally appointed by the Head of the State, is nevertheless responsible to the Legislature and is, in a way, part of it. In one capacity it may be regarded as a body, seeking to exercise all the powers and functions which, on paper, belong to the Head of the State; in the other capacity, it appears as a Committee of the Legislature, to which it is responsible and of which it is a part and whose powers have devolved upon it. But, then, the broad policies formulated by

the Cabinet and the laws enacted by the Legislature, have got to be enforced and this underlines the importance of a whole body of civil servants, who constitute the administrative machinery. Without such a body, no community today can live and no Constitution, howsoever perfect, can deliver the goods. The problem of their

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countries

economic development is absolutely urgent, the executive branch of the Government, will have to include the planning bodies at all levels. The term 'democracy' today, is inter-changeable with the Welfare State and all Governments now claim that they not only rule with the consent of their subjects, but also in their interests, giving them protection, security, opportunity, justice and welfare. On the one hand, therefore, this universal desire of Governments to justify themselves explains the existence of elections and political parties, and on the other it brings about the entire complex paraphernalia of economic and social services.

Just as the evolution of societies has been form status to contract,

Legislature. With the rise and development of industrialism however, the need for speedy as well as extensive action came to be felt more and more. The result, is that in a modern state, the executive is not only responsible for the enforcement of laws and for conducting the general administration, but it is increasingly extending its scope in the legislative sphere itself. It provides an initiative and leadership to the Legislature; it suggests the main line of foreign, home and financial policies; in many states, it lays down the dimensions of a comprehensive national plan sub-

it controls the entire financial life of

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in the case of Britain, the prolonged battle between the Monarch and the Parliament was fought on the issue of who will control money. In the United States, the

and the Act of Settlement (1701) and in the Constitutional Checks and Balances provided for in the American Constitution. In the twenties and thirties "New Despotism" was popularly decried. But the economic problems created by the Great Depression of 1929-30, the dangers produced by the total wars of our time, and a general sense of insecurity and uncertainty which seems

to haunt the mind of individual today, the decline in the earlier enthusiasm for the wisdom and competence of representative assemblies, and the rapidly multiplying problems and functions of Government have brought about a revolutionary change in our attitude towards the Executive. A powerful trend in practically all the Constitutions that have been framed after the Second World War has been a spectacular degree of powers entrusted to the Executive. It has been increasingly realised in our times that the theory of democracy does not merely end with a declaration of sovereignty of the people or with the slogan of majority rule, or even the rule of groups but that it implies an effort on the part of authority to expand the zone of happiness of all the members of society. And, if this is to be done, there will have to be larger and larger place for leadership and specialised knowledge in the administration. Even in a democracy, the ruler's job is not merely to follow an opinion; government must make up its own mind and not merely wait to be pushed into action. This means executive initiative. It is true that the alternatives open to a democratic government are not those which are available in a closed society and that the government effort in a democratic set-up is seriously limited by the willingness of the people to accept governmental authority. But it cannot be gain-said that the democratic process is a subtle interplay of pressure and leadership. A government that bent before every gust of opinion would earn, in the long run, neither gratitude nor respect. It is commonly said in India that people do not want freedom so much as they want security, and, therefore, authority. With every crisis, the Chinese aggression notwithstanding, the cry has gone forth that this country needs a strong government. Although people clamour to get their grievances redressed and they even exert pressure in matters that concern them seriously, they expect government to know what they are about, to act with firmness and to initiate policies which can have their acceptance and their confidence, not to wait on opinion to push them [illegible] the Manager holds th[illegible] management today. [illegible] of public administration. It is the expert who is everywhere in demand, and more than anything, people want expert administrators. The principal ingredients in the modern theory of [illegible] public would turn down.

This increase in the powers of the executive and augmentation in its prestige need not send a thrill of shiver in our veins. All States, let it be frankly admitted, represent authority and authority always gets concentrated in the hands of ability. The loose talk about the Iron Law of Oligarchy need not worry a serious student of political architecture. Anybody can see that

every association is run by a few energetic and ambitious men. The rest is mere tail and only responds to their proposals. All democratic forms merely obscure this fact; they do not alter it. If in every association, the bulk of the members fall in with the proposals of the few in authority and accept without demur, what legitimate objection can there be to the leadership supplied by the Executive in a State? Those who criticize men in authority today, are not the less ambitious and less energetic. Their love for power may even be greater. The glory of democracy, therefore, does not lie in the progressive dimunition of the executive authority; it lies in the fact that those who possess executive authority owe it to free election and are bound to give reasons for their decisions. So we grant them powers; and they have energy, push and ambition. The silent contract in a democracy, is that this executive energy and ambition must be used to satisfy the electors; if not, the ambitions of the men in executive authority will usually be frustrated.

Thus it has happened that the 18th and 19th century suspicion and distrust of the executive has been replaced by the trust and confidence that we now repose in it. Both phenomena have been backed up by the evolving and changing postulates of democratic thought. What has really happened is a revolutionary change in these postulates. In the 18th cntury, democracy meant liberty and liberty meant absence of restraints. This implied comprehensive checks on the executive. Today, democracy means liberty as well as egalitarianism, which means more and more action on the part of the State. That has meant, in actual practice, the growing need for prompt governmental action in the field of [illegible] contingencies, and the notorious delays incidental to the partisan [illegible] with the executive branch.

Finally, the chief executive today in all the democratic states is elected by the same process by which the legislature is constituted. [illegible] at best represent [illegible] national executive [illegible] election is over, the British Prime Minister is not a mere leader of the Conservative party. In India, the Prime Minister is a national figure. No politician can be a successful Prime Minister until he represents in his utterances and policies the aspirations of the nation as a whole. In the United States, the President is the public opinion purveyor and moulder, the care-taker of domestic tranquillity. He

has become "a father image." In all countries including the most advanced ones, a major desire of the people is for economic stability the chief ingredient of human happiness. The legislature may make all the laws designed to maintain the economy on an even keel; but the people will always look to the executive initiative in such matters of public economic policy, as full employment, economic controls, fiscal policy and adequate housing. There may be, in every society, natural calamities and disasters, such as floods and earthquakes, and in such moments it is the executive which can set the proper mchinery in motion for relief. During the last hundred years has come about a revolution in technology which has opened the flood gates of tension and violence (it has also given us comforts of life) and this has accentuated the longing for peace and security. The average man looks to the executive to satisfy this longing, and the executive immediately obliges. This is not a power that can be formulated in statutory terms but it is nevertheless real. The legislature is responsible to the people, so is the executive. If the legislature is the embodiment of the national will, the executive is the expression of the national spirit. When the legislature makes a bad law, the responsibility is diffused, but when the executive takes an unpopular measure, those responsible can be singled out. National defence is in theory, the [illegible] us the executive; if [illegible] Minister is singled [illegible] evitable and which must not be grudged.

NEWER FUNCTIONS OF GOVERNMENT TODAY

It is thus clear that with the march of time, the *laissez-faire* philosophy which held that government should restrict itself to [illegible] enance of [illegible] s declined. [illegible] of labour came, the social structure became more complex and individuals became less able to control factors affecting their destiny and more dependent on the actions of others that they could not control. At one time the cultivator depended on the mercy of the weather and it just did not strike him that human machinery [illegible] factors and forces cannot be controlled by the individual farmer or the individual worker. The result is that all of them appeal to the Government for rescue, and economic and social inter- [illegible]

vity at an astonishing pace, it nevertheless condemns large sections of population to poverty and insecurity has also brought about a revolution in the theory of functions of government. In order to meet these and like problems, modern government today has to regulate various facets of the national economy, ranging from factory legislation and requiring safety devices in factories to the fixing of rates and standards of service for Railway Companies. And this, it does in the name of common good or public interest. The government, furthermore, not only attempts to reduce the glaring inequalities of income but also inequalities of consumption with a view to improving the security of the less fortunate members of society through social services or social seurity measures such as health insurance, unemployment insurance and old age pensions. All these measures are operated by governments. The government regulates the entire tax structure today, which in its turn controls the movement of finance as well as resources. This movement towards social security and regulation of business was demonstrably accelerated by the extension of universal adult franchise, which rendered government amenable to popular control through a democratically elected legislature. While in

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This is what positive state means. In peace-time, the government has to ensure education, health, security, against misfortune and a designed standard of living; in war time it controls the entire activity of the population in order to achieve efficiency. It does not need a genius to understand that when efficiency becomes the prime consideration, separation of powers is an embarrassment. The traditional theory of the tripartite division of powers sponsored by Locke and Montesqueu may have been an adequate instrument of analysis a hundred years ago, but it can be no guide for an understanding of the complex operations of government today. In the view of this author, therefore, there is no place for *laisez-faire* constitutions now, for they are far away from the realities of present day society.

the domestic currency shall be exchanged for foreign currency. This means that the whole policy of Imports and Exports can be modified by the Government. Moreover government must also regulate trade combinations, trusts and monopolies. Public utilities must engage its special attention—transport and communications and electric power in particular. Similarly, the financial enterprises of Insurance, Trust and Loan companies must be subject

to close governmental control. No corporation can be formed to conduct any enterprise unless a Charter has been secured from Government. As with business, so with labour. The government has to issue Factory, Shop and Mine Regulations designd to ensure safe and sanitary working conditions. It also regulates hours of work and working conditions for women and children. Employers can be compelled to provide compensation and rehabilitation to the injured workers. At one time the burden of industrial accident and industrial disease mainly fell on the worker himself; today it has been turned through government action into a cost of production that falls on the purchasers of the products of industry. The wages are fixed by the government in practically all advanced countries. It is a universal practice of the government to enforce an immigration policy intended to limit the entrance of foreign workers into the country. In some industries, the government steps in directly and acquires ownership. At one time Post Office was the only government enterprise; today the government operates railways, canals, all means of communication, hydro-electric power and a thousand other enterprises and in all of them the effort of the government is to make itself a model employer and a model producer and a model distributor of goods and services. In agriculture, government seeks to apply science and to control animal diseases and plant pests and in so doing it may order the wholesale destruction of plants and animals. This is the government power of quarantine—modern version of the police power of state. The government has to carry on large scale researches in agricultural matters with a view to improving breed of agricultural product whether plant or animal. The education of the farmer is essential in every country, more so in a country like India. And this the government does by national extension services, industrial exhibitions (two such have been held in New Delhi during the lst seven years), agricultural fairs and a barrage of bulletins. The government intervenes at numerous points in the marketing process on behalf of the farmer. It is generally accepted that state trading in food grains is in public interest in a country like India. The Government of India is officially committed to cooperative farming and co-operative marketing. Modern governments have also to stabilize prices and production. In the United States, the Agricultural Adjustments Act of 1938 attempted to limit acreage, to fix marketing quotas and to facilitate the storage of the surpluses with regard to the five principal agricultural products. This legislation was intended to maintain prices and to ensure growers an annual average return in the good and bad years. The development of medical science has expanded the field of governmental control in public health. Not only hospitals are maintained by the State but all new drugs are inspected by state inspectors. Close control and supervision is exercised over the municipal health agencies. Milk and butter are frequently tested; sanitation measures must meet government standards; infectious diseases must be controlled; public fairs

(such as Magh Mela in Allahabad, or the Kumbh Mela at Hardwar) must be subject to strict government regulation; and continuous research must be carried on the fields of sanitary engineering and preventive medicines.

Modern governments, as we stated earlier, have replaced the institution of charity by social services and social security schemes. A poor man will hesitate a hundred times in accepting charity from a private citizen but he will go out of his way to secure assistance from the government. The reason is that the government is impersonal and his vanity is not affected. This is the concept of self-respect in the modern industrial era. A government, therefore, which fails to provide help to the poor against accident or misfortune, will fail in one of its most important purposes. Similarly, a poor student will try to secure State scholarship instead of begging for private monetary aid. Scholarship means merit while private help means pity. The choice is clear. The government, therefore, must not only provide for schools, but must also provide for free education or must give scholarships to about 70 or 80% of the student population. This, at any rate, is necessary in a country like India where poverty is a national industry. But it is not merely the conservation of human resources that is important, conservation of natural resources is equally necessary. Public health and social security secure the former; the government must also do something to secure the latter. In India, for example, the government must do something to conserve our forest wealth and the wild animals. In order to do this, forest protection services become necessary. The Van Mahotsava movement in India is well known. In all countries reforestation projects are often launched. Similarly, rivers and streams are to be protected against pollution. Wild life sanctuaries are government enterprises. The government has to act to save the land from erosion. And since all this would mean scientific knowledge, the government has to maintain elaborate research institutes to do the job.

Finally, there are thousands of other miscellaneous functions which modern governments have to perform. In hilly areas the tribes have to be brought forward and roads have to be built up. All over, provision has to be made for housing. If a commodity is scarce, control and rationing has to be enforced. Innumerable pressure groups and special interests have to be adjusted and coordinated. Thus individualism which regarded government as an essential evil is dead even in countries where it originated. [illegible] *laissez-faire* and state [illegible] ped. The great debate [illegible] and state control can be brought about piece-meal and by peaceful methods or whether all capitalists must be destroyed root and branch and the means of production socialized by force. This is really the nature of the conflict today which is called as the Cold War.

ROLE OF THE EXECUTIVE

The tremendous expansion of state activities to which we referred in the preceding paragraphs will clearly streamline the nature of the executive Department of the government today. Most of those functions which the state has now to perform cannot be performed either by the legislature or by the judiciary. The reason is simple. Most of these functions call for a specialized and expert knowledge. If efficiency in these functions is to be achieved premium has to be put on management and administration. Whether you try to run agriculture or industry sanitation or anything else you have to turn to the executive agencies, boards, commissions or bureaus for relief and not to the legislatures or to the Courts. If you have to secure a pass-port or a *visa* you must run to the executive staff. Indeed one may go to the extent of saying that modern government is not so much a matter of legislatures, the Courts or even the Ministers as it is a business run and conducted by the civil servants and the clerks. You start any scheme designed to bring about social welfare it will bog down if the staff below is unsympathetic or indifferent. We may even say that the theory of the three organs of government is completely outmoded, for, today, there is the civil service (including the clerical staff), which is the fourth power. Since we tried planning in India, the strength of the executive staff has been more than doubled. The New Deal experiment in the United States swelled the civil service by 3,00,000 persons; similarly; the nationalization schemes in Britain resulted in a tremendous swelling of the industrial and technical services. It is, therefore, necessary to realise that the doctrine of welfare state or of positive state has really resulted in a great aggrandizement of the executive. The centre of gravity is no longer the Legislature. As one authority has put it. "Where Judges are numbering by dozens and legislators by thousands the executive counts in tens of thousands."

But the importance of the executive does not lie merely in the numerical superiority which it has over the legislature and the judiciary. The secret of the executive superiority lies in the fact that the executive is the main spring of government and that it makes the wheels go around. It "runs the vast household of [illegible]

be described as the carrying out of mandatory laws. There is, ordinarily no law requiring the government to conduct geological surveys, diagnostic laboratories or experimental farms. They are lawful because the appropriate legislature, national or provincial, has granted money for the purpose."

The doctrine that the executive is responsible only for the

the executive initiates constitutional amendments. In the Presidential system any bill passed by the legislature normally would require the executive's approval, and the executive's disapproval can be expressd by a veto either directly given to the bill, or as in the 'pocket veto' of the President of the United States, occurring after a stipulated time provided that the Congress has adjourned. Even in Parliamentary types of governments, where the executive presumably has approved of the bill from the very beginning, the Head of the State (the Monarch in Britian and the President in India) has to ratify a bill. Again, the executive is responsible for controlling the sessions of the legislature. In Parliamentary governments, it has the power to dissolve the legislatures and order fresh elections. This at least is true of countries like Britain, India, Canada and Australia,. The executive controls major appointments in all branches of administration. It has also the power of dismissal. In the United States, the executive power of appointment may be limited by the necessity of securing senatorial confirmation, but a strong President can always assert. In India, the Union executive has vast patronage in its hands. The executive responsible for conducting foreign affairs, for carrying on negotiations with foreign states, for the appointment of ambassadors and diplomatic agents, participating in international conferences, and for signing treaties. It is the executive which represents a country abroad. It takes decisions with regard to the recognition of foreign governments. It receives foreign ambassadors and it expresses foreign policy of the state. There may be legislative control to a certain extent but the executive can always create a situation where this control is rendered negative. In Britain, the executive is almost free of legislative restraint except in case of transfer of territory or expenditure of money, in the United States however, all treaties must be approved by the Senate and all tax bills initiated by the House of Representatives. The executive is also responsible for granting pardon or amnesty to those convicted of crimes. In parliamentary governments, the executive has extensive powers in the sphere of finance. Finally, the executive is the chief of the military forces of the state and is responsible for formulating defence policies and determining strategy.

It must be borne in mind that the position of the executive in a democracy, whether Parliamentary or Presidential or Plural, is different from that in a dictatorship. The basic difference lies not only in the amount of power possessed by the executive in a dictatorship, but also in the fact that the democratic executive holds office either for a fixed term or at the pleasure of the Legislature, while a dictatorial executive enjoys indefinite or life tenure. In other words, while a democratic President or Prime Minister is politically responsible to the people or to their representatives and must be held to periodic account, a dictator is both irremoveable and irresponsible. It is true that during period of emergency a democratic society may confer extraordinarily wide powers to the executive. In Britain and the United States, during the two

World Wars, sweeping powers wre given to the Executive. With the proclamation of emergency in India following the Chinese aggression in October, 1962, very wide powers have been conferred on the executive. But then, these powers are taken away as soon as the emergency is ended and even with the increase in powers, the executive continues to be responsible to the legislature. In the United States even during wars, elections cannot be postponed and while in England they were postponed during the two wars, they were held immediately after the wars ended. In a democracy the executive can always be removed by a vote of no-confidence passed by a legislature, by failure at the general elections, in some cases by the popular recall, and by impeachment. The checks on the executive in a democracy are really formidable—it is subject to removal, it has constantly to face re-election, it has to give account of what it is doing to the legislature, and it is freely criticized by the judiciary within and by the press without. These checks are not available in dictatorships.

ORGANIZATION OF THE EXECUTIVE : THEORY

While dictators owe their positions to revolution, force, fraud, and violence, it is different in democratic states. Here, the nominal executive is either hereditary (as Monarchy in Britain), or is elected indirectly (as the President in India). The chief or the real executive may be elected either directly by popular election, or [illegible]

[illegible] is direct. The German Weimar Republic used the method of direct popular election to choose its President. Direct election today prevails in Ireland, Brazil, Philippines, Portugal; Mexico and some other states. Portugal, of course, is a concealed dictatorship. Indirect election by an electoral college is used in countries like Argentina, Finland, India and West Germany. In Indonesia, the chief executive is elected by a large assembly chosen directly by the voteer. In the Fifth Republic of France, the President was [illegible]

Councils. Under the [illegible] directly elected by the people [illegible] S.S.R., Yugoslavia and Italy, [illegible] houses of the national legislature. In many countries the Chief of State [illegible]

be appointed by the Union President (as in the case of India). In Parliamentary democracies the real executive—the Cabinet is, in theory, appointed by the Head of the State as in England, India, West Germany, Italy, Australia and Canada. In actual practice,

main types of executive today—the Parliamentary tyep, the Presidential type and the Collegial or Convention type. It is true that the broad principles of government have not very much changed during the last thousand years or so. Government still depends on the will of one man or a few or the many and it can still be good or bad. In this sense, Aristotle's analysis holds good. But it is not the broad principles with which we are here concerned, but with the more detailed and intricate problem of the mechanism of the modern government.

PARLIAMENTARY GOVERNMENT

Today there are two types of Parliamentary government—the British and the Continental or the French. The British type is the model which is followed in countries like India, Australia, Canada, Newzealand and other parts of Commonwealth. The basic features of both types may be easily observed. The parliamentary type of government, historically, has gradually developed from a stage where the monarch was supreme *through* a stage when this supremacy was challenged by the legislature, to a stage where the legislature has taken over complete responsibility of the government and the monarch has been deprived of most of his traditional powers. In Britain, for example, the Tudor period represented the first stage; the Civil War and the glorious revolution of 1688 inaugurated the second stage, and the 18th and 19th centuries completed the third. More or less a similar tendency could be observed in Sweden.[1] In many countries, however, the process of constitutional development was crowded into a very short period so that they passed straight from despotic monarchies to parliamentarianism. As Lidderdale said about France: "In 1953 it is the representative assembly of France, which had been transformed from a medieval gathering of the King's principal subjects, grouped into three distinct classes, into a modern parliament composed of the deputies of the people."[2] In all parliamentary governments a distinction is made between the nominal executive—the head of the state and the real executive—the Prime Minister or the Chancellor, who is the Head of the Government. The head of the state may be either a constitutional monarch or he may be an indirectly elected President. In any case he may have important prerogative or discretionary powers, but these are exercised in accordance with well established conventions which are democratic in tone and temper. The British pattern is, thus, flexible. In Sweden, Article 4 of the Constitution confers wide powers upon the King. But they are exercised in consultation with the Ministry. A similar situation prevails in India, Australia, Canada and Newzealand. In Japan, however, it was feared that the Emperor might not accept the role of

[1] Sweden passed from the first to the second phase with the introduction of a new Constitution in 1809. Absolutism gave way to democracy gradually.

[2] *The Parliament of France*, pp. 6-7.

a constitutional monarch and so the constitution vests the executive power expressly in the Cabinet (Article 3 of the Japanese Constitution). The Emperor is, thus, only the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom rests sovereign power. In the Fourth Republic of France the Constitution clearly defines the powers of the President of the Republic and those of the Prime Minister. In the Fifth Republic, however, the President has special rights, which make him superior to the Ministry. It is at this point that the Constitution of the Fifth Republic departs from the pattern of the Parliamentary gove
he has no real powers,
state action. It is the
Where the Presidents are elected, the position is essentially different for an elected President can always over-step his constitutional position and must be penalized for having done so. Thus, he is subjected to impeachment for high treason in France, for violation of the constitution in India, for unconstitutional activity in the Federal German Republic, and for all these in the case of Italy.
Because ... the head of
the state
governm...
made between the two offices and this distinguishes it from the Presidential type where there is no such distinction (as in the United States where the President reigns as well as governs and where he is appointed by the electorate directly). In the convention system, the head of the government is appointed by the legislature itself. But in parliamentary governments the head of the state is not entirely free in the selection of the Prime Minister. He is bound by the results of parliamentary elections and must appoint the leader of the majority party as the Prime Minister. In case, however, no party has an absolute majority in the legislature, the discretion of the head of the state becomes real. In 1924, no party secured an absolute majority in Britain. The King invited the labour leader, Mr. Ramsay Macdonald, to form the government because the labour party was most numerous in the House of Commons. Where the leadership of a party is not clear, the power of the head of the state may again become real. In 1923, when Mr. Bonar Law resigned, the King had to choose between Lord Curzon and Mr. Stanley Baldwin, and the King decided in favour of the latter on the ground that the Prime Minister must not belong to a House where the main opposition was not at all represented. The claims of Lord Curzon were thus passed over.
in the formation of a national
the resignation of Mr. Neville
ated by the King to be the
Prime Minister. In 1957, when Sir Anthony Eden resigned as a sequel to the Suez crisis, the Queen on the advice of Churchill and Lord Salisbury, the Conservative leader in the House of Lords, appointed Mr. Harold Macmillan as the Prime Minister and

passed over the claim of Mr. R. A. Butler, the Conservative leader of the House of Commons. Thus in the circumstances we have mentioned, the powers of the head of the State in the appointment of the head of government may be quite real. In some parliamentary Republics (as in West Germany and the Fourth Republic of France), the President nominates a candidate, the legislature gives its approval by electing him (as in Germany) or by giving him a vote of confidence (as in France), and then the President appoints him as Prime Minister.

After the head of government has thus been appointed, he is responsible for selecting his colleagues and his selections are then approved formally by the head of the state. The Head of the State may, at times, exert a powerful influence upon appointments. The degree of influence will depend upon prevailing political situation and upon the relative ability, experience and wisdom of the head of the State and the Prime Minister-designate. In the selection of his colleagues a Prime Minister will have to bear many considerations in mind. Different regions, religions, linguistic minorities and shades of opinion in the country have to be represented. In England, the Scots and the Welsh and the various sections of Englnd must not be forgotten. In India, North and South must be properly represented and Bengal and Maharashtra cannot be easily ignored. The Sikhs and the Harijans cannot be left out. Important social and economic interests must be kept in view in all countries. Different sections within the party must

e must be represen-

ital. The propor-

, otherwise younger

persons will not be able to get the necessary training. Member, of former Cabinets cannot be left out easily. Effective critics when the party is in opposition, are difficult to exclude. An unsuccessful rival for the leadership of the party will be extremely dangerous if left out. A man may be more nuisance outside than inside the Cabinet and he must be taken. In Canada, important provinces must be represented more than others. Similarly in

e case of the liberals, the Prime Minister is free from the formal control of the party. But whatever the mode of appointment of

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in his Cabinet. While he is the key-stone of the Cabinet arch and [illegible]

central to its life and central to its death; he may constitute the life-breath of the government; he may compel his colleagues to drop out of the cabinet, and he may even demand their resignation; he may compel a recalcitrant member to behave, but he cannot always impose his policies on his colleagues. If he is the main spokesman of the government, it is because his party has elected him as its leader. He has to meet the different pulls and pushes in the party and he has to equate party interests with national interests—a difficult exercise. Thus, just as democratic balance has to be maintained between the head of the state and the head of the government, a democratic equipoise is also essential between the Prime Minister and the Ministry. In the absence of this, the whole government may fall. Let the Ministers talk as much as they like so long as they talk with the same tongue. The Cabinet must function as a unit, otherwise the shadow cabinet which is always there, will make full political capital out of it. In this partnership the Prime Minister is more than a primus inter-pares, but always less than an autocrat. There are things which the Prime Minister can do unchecked. For example, he alone determines whether and when Parliament shall be dissolved. He can also shuffle his pack as he pleases. The cabinet reshuffle made by Mr. Harold Macmillan in July 1962 was as dramatic as unexpected, in which as many as 7 senior Cabinet Ministers including Mr. Selwyn Lloyd, the Chancellor of the Exchequer, were dropped. [illegible]

what other Ministers allow him to make of it. His powers are large, but he has to secure the collaboration of his colleagues."

Another essential element of a parliamentary democracy is that they [illegible] is no law [illegible] other, the [illegible] But of the [illegible] then, [illegible] one or [illegible] appointment as Minister. When Bevin became Minister of Labour in 1940, a seat was found for him in the House of Commons, and when Sir Percy Mills became a Minister in 1957, he was put in the House of Lords as a peer. In India, the Constitution expressly provides in Article 75 that a Minister within six months of his appointment, must become member of either House of Parliament. In 1955, Mr. Govind Ballabh Pant was appointed as the Home Minister and a seat for him was found in the Upper House. Under the Fourth Republic of France, ministers were stated to be collec-

tively responsible to the National Assembly and by implication had to be members of that body. Similar position prevails in Japan, Australia, Canada and Newzealand. But then, in Sweden, one-third of the Ministry of 15 members have, in recent years, not been members of Parliament. In the Netherlands, Norway and Luxembourg, Ministers are prohibited from becoming members of Parliament after their appointment. It will be recalled that in Britain, under the Act of Settlement of 1701, it was provided that no person holding an office or place of profit under the King or receiving a pension from the Crown, should be eligible for membership of the House of Commons. The theory underlying this legislation was a relic of the doctrine of the separation of powers under which Ministers were responsible to the Monarch. Gradually, however, the principle was developed that the Ministers must be responsible not to the Monarch but to the Parliament and the changed view made it essential that Ministers must belong to the legislature. A trace of the older view can still be found in the traditional French rule that ministers must not be members of parliamentary Committees. Even in countries where they are not members of legislature, they are usually permitted to take part in parliamentary debates. In Norway, Sweden, Netherlands and Luxembourg, this is done. In the Fifth Republic of France "the government is not responsible to Parliament for the conduct of the President" and so the ministers are not truly responsible to the Legislature.

The purpose behind ministerial responsibility to the legislature is to put the head of the state under democratic restraints. Traditionally ministers were responsible to the King in France and in Britain, as they are still responsible to him in Nepal. They were

for all that the King does. That is how the doctrine developed that all official documents must be countersigned by Ministers and the countersigning Minister is responsible to the people's representatives. While the person of the King could not be touched, a minister who countersigned a document wrongfully or unconstitutionally, could always be impeached.

It is an essential characteristic of a parliamentary government that the Prime Minister must be entrusted with the power of dissolving the legislature and that whenever a recommendation is made on the subject, it must always be accepted by the head of the state. He can nei

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In India, an occasion for dissolution has not yet arisen, but there

ment, secures the loyal support of its party. Wherever this power is divided, the essence of parliametary government will be missing. In Norway, the Storting dissolves itself, the head of the state being allowed to dissolve only special sessions. This is a departure from the theory of parliamentary government. In the Fourth Republic of France, the right of the Government to request a dissolution of parliament was restricted by the constitution. Here again, a departure was made from parliamentarism. But it must, however, be noted that the executive power of dissolution of the legislature does not take away the supremacy of parliament. After all, when the legislature is dissolved, it is also the government which ha ... er until the new parliament assemble ... : cannot back it up, it must resign. ... of the parliament. A better way of p ... mentary democracy, neither the executive dominates the legislature nor the legislature can dominate the executive. The executive depends upon the support of the legislature if it is to continue in office; but the legislature is not supreme because the executive can, if it chooses, dissolve the legislature and appeal to the electorate at the polls. This is a fundamental principle of parliamentary government. The current phrases "cabinet government" or "supremacy and sovereignty of the parliament," must, therefore, be understood in their correct perspective, for they can be misleading. The former seems to emphasize the dictatorship of the cabinet which is not there; the latter tends to emphasize the dominance of the parliament which

the ministry. We will come to this later. In some systems as in the Fourth Republic of France, it was the legislature which was dominant and that made the French system move in the direction of convention government. Really speaking, the theory of parliamentary government, calls for an intimate co-operation between the executive and legislative branches. The phrase "sovereignty of the parli
"parliament
be said to b
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by its terms.
government,
government is responsible to it and not in the sense that parliament has unrestricted powers.

Responsibility to parliament is not the same thing as responsibility to electorate. A parliamenary government, while directly

responsible to the legislature, is only indirectly responsible to the electorate. It cannot be said to be appointed directly by the voters but it is appointed indirectly from amongst the representatives whom the electorate elects to the legislature. Thus the route to the government lies through elected representatives. Now it is true that today, elections are fought on national basis and the electorate in theory, can be said to have a choice between two alernative governments. This, at any rate, is true of those states where two-party system prevails. But this is true only in a very broad sense. Really speaking, the individual voter in India or in Britain, is only voting for a member of the legislature. The pople have not directly elected a government. All that has happened is that the people have elected a party, whose leader is called upon by the head of the state to form a government of his own choice. Such persons can be appointed ministers who have not even obtained the mandate from the people. Ministers are, in fact, chosen by the Prime Miniser on considerations, to which we have already referred. Indeed there have been cases when even Prime Ministers have been appointed without any reference to the people. For example, Lloyd George was appointed Prime Minister in 1916, Stanley Baldwin in 1923, Churchill in 1940, Macmillan in 1957, without previous elections. These [illegible]
people later on. In the [illegible]
appointed him in 1940 and [illegible]
out in 1945. Throughout this period, no reference was made to the people at all. In India, Mr. C. B. Gupta was appointed Chief Minister of Uttar Pradesh without any reference to the people. In fact, he had been twice defeated in the elections when the Governor appointed him as the Chief Minister of U.P. Afterwards a seat was found for him in the Legislative Assembly. In countries where there is a multi-party system in which no party has a majority, the relations of government and the electorate become much more indirect. Here, the voter, in casting his vote, can have no clear idea as to the complexion of government that will be formed at the end of the election. The government will actually be formed by the party leaders and the head of the state. It is hardly the direct result of the elections. Thus, in parliamentary democracies, the electors are responsible directly only or candidates and parties, while the government may consist of those leaders who have been successful in the election but also of outsiders.

Finally, in a parliamentary system, the parliament is the centre of gravity and the focus of power. It is here that the drama of politics is staged; it is the grand inquest of the nation; it is the forum of the nation's ideas; and it is the wide university where political education is imparted and future political leaders are trained. While the government cannot afford to fret at the constant criticism which the legislature must afford to its programme, the legislature in its turn, must never attempt to usurp the functions of the government. The politicians, the party leaders and the

voters must have faith in the parliament. If this faith is lacking, the parliament stands discredited and the parliamentary system will fail to work. If in a society, wide sections of people start doubting the stability of parliamentary government, confidence in parliamentarism will be seriously undermined.

PRESIDENTIAL GOVERNMENT

Earlier, we have referred to the principles and the general political structure of a presidential type of government. At this stage we will try to put the theory of presidential government in a manner which might give the reader a deeper look into the traits of the presidential type of governments.

The presidential government is generally associated with the doctrine of separation of powers. The reason is that this doctrine was extremely popular in the 18th century and was considered as a bulwark of individual freedom and democracy. This was also the period when the American Constitution was being framed. This doctrine was consid [illegible]
monarchy. [illegible]
separation [illegible]
in practice, [illegible]
government is to be a going concern, all the powers must be co-ordinated and there should be what the Americans call a system of checks and balances. To a certain degree there has to be some sep- [illegible] t there [illegible] . While [illegible] ted, in [illegible] they are not entirely fused. The real difference between the presidential and parliamentary governments, therefore, does not lie so much in the question of separation or fusion of powers as it lies in the nature of institutions. In a parliamentary state there is a single institution called Parliament which really combines the executives as well as the legislature and to a certain extent even the judiciary. This at least is true in England where the Parliament may be said to exercise executive, legislative and judicial powers. In presidential systems, the executive *is not* combined with the legislature as an institution and the judiciary is, of course, different. As one authority has put it. "the term separation of powers is an inadequate and misleading description of the theory underlying presidential government. It is inadequate, because, as stated by Montesquieu and Blackstone, it applies to a monarchical executive which has since been judicially replaced by parliamentarism and because it does not explain the theory of presidential government. It is misleading, because the powers are separated in both presidential and parliamentary theory."

It should be remembered that in a presidential government there is a clear distinction between the government and the legislature. The President, in the United States, for instance, is the

Chief executive, is both head of the state and head of government
not
hat
as
the legislative functions. Just as for the understanding of the parliamentary type of government we have constantly to refer to the British system, for the understanding of the presidential type our main guide is the American political system. In a presidential system not only the executive is separate from the legislature, but the executive itself remains undivided. The presidential executive is elected

This has the result of associating the two branches of government and clarifying political issues. It is true that the simultaneous elections do not prevent the return of a democratic President and
on obviously would be even
for seven years, as in Fance.
both the executive and the
legislature should be selected by the electorate. While in parliamentary government the Prime Minister is responsible for the appointment of other ministers who are his colleagues responsible collectively to the legislature, in the presidential system, the President appoints Secretaries who are sometimes styled as ministers and who are heads of administrative departments. In theory, these appointments are subject to the confirmation of the Senate in the United States and the confirmation of the Commission on Appointments in the case of Philippines. In practice, however, the President has a very wide choice and the legislative veto is very rare. These secretaries can be appointed even from amongst those who have had absolutely no experience in the legislature before. All of them are responsible to the President and can be dismissed by him. They are merely administrative assistants of the President. These Secretaries, thereore, can never constitute what sometimes the American authors call the American Cabinet. These Secretaries report to the President on departmental problems and such of them can be consulted intimately by the President who has his confidence. In Bolivia, Costa Rica and El Salvador, ministers are made jointly responsible for the actions of the executive but this does not lead to the concept of collective responsibility. It is only intended to provide a check on the President. It is only

rotation. The National Council is
ministers of state are appointed by the Council to become heads

they are entitled to attend and take part in debates. This ensures
that the executive is not held responsible to the legislature. Their
responsibility is to the Constitution. The Executive acts in the
United States can be declared unconstitutional by the Supreme
Court, and the President can also be impeached by the legislature
for acting unconstitutionally. The legislature's power to impeach
the executive obviously does not have the effect of making
the executive responsible to the legislature. "Impeachment
enforces juridical compliance with the constitutional letter of the
law and is quite different from the exercise of political control over
the President's ordinary conduct of his office." The concept of
political responsibility involves a day-to-day relationship between
the executive and the legislature, impeachment is the ultimate
penalty necessary where in the ordinary course the executive and
the legislature do not depend on each other. This does not mean
that the President does not stand in need of the goodwill of the
legislature for the furtherance of his policies and programmes.
Indeed without the co-operation of the legislature, it would be
impossible for the President to function. The legislature has
powers in the spheres of budget, foreign assistance programmes,
treaties and important appointments. But a hostile Congress
may harass a President, who may threaten the Congress with a
dissolution Thus, in presidential system neither the executive
nor the legislature can coerce each other. It is in this sense that
this system is *par excellence*, one of checks and balances. It is not
so much the theory of separation of powers, therefore, which is a
prominent feature of the presidential type as it is the doctrine of
checks and balances. The President is the leader of his party
head of the government, enjoys immense patronage, initiates
major legislation, and is responsible for securing its passage through
the Congress. The Congress has the complete power over money.
The government, therefore, has to function through compromises.
The Presidency and the Congress, as Mr. Kennedy said, are two
separate offices and two separate powers. There is bound to be
conflict between them but they must cooperate to the degree that is
possible. But that is why no President's programme is ever put in.
The only time it is put in quickly and easily is when the programme
is insignificant. But it is significant and affects important interests
and is controversial then there is a fight and the President is never
wholly successful. Franklin Roosevelt was elected by the largest
majority in history in 1936, and he got his worst defeat a few months
after in the Supreme Court Bill.[1] In some Latin American countries,
the President can automatically decree the Budget if the legislature
does not vote it. The Constitution of the Fifth Republic of
France also has a similar provision. In America, however,
if the Congress refuses to vote for funds, the President will have
to go without it. Where does, then, the supreme power lie in the
Presidential type of state? In parliamentary government, it can

1 The President of the U.S. Reports. Two years in Perspective Dec. 17, 1962
U.S.I.S., New Delhi., p. 15.

be said to lie in the parliament (as in Britain) or in the constitution (as in countries having written constitutions). In the United States of America, the Congress cannot force the resignation of the President any more than he can dissolve the Congress. Moreover, the acts of both can be declared unconstitutional by the judiciary. In this sense, therefore, the Constitution can be said to be supreme. But the Constitution itself can be amended by the Congress, the Congress has the final powers over money; and it can impeach the President. In the event of a serious constitutional conflict, the Congress can whittle down the judiciary by amending the constitution without any reference to the executive, which is simply not possible in parliamentary types of states where the constitution can be amended by the parliament, which includes the executive as well as the legislature. It can, of course, be argued that even in the United States the consitutional amendment must be ratified by three-fourths of the state's legislatures. But, here again, it is the legislature which counts and not the executive. Ultimately, therefore, even in presidential types of states, the legislature is supreme.

We have stated that in presidential systems the President is elected by the people. That makes him representative of the nation and gives him a position superior to that of a Congressman, who merely represents his constituency. The President maintains his contact with the people through fire-side-chat, television appearance, weekly press conference and other devices. In parliamentary states, the voters elect representatives to the legislature and the legislature then provides the executive; in presidential states, the voters elect representatives to the legislature, but instead of leaving the selection of the government to the legislature and head of the state, they also elect a President as executive. The electorate here, therefore, bears the total burden.

Finally, in a presidential state there is no focus of power—no recognised centre of the political system on which the people and politicians can focus their interests and aspirations. This does not necessarily mean weak [illegible]
of course, important. [illegible]
weak man can create [illegible]
have a multi-party system, the tendency is to enhance the President's status by giving him a longer term of office than that of a legislature. In France, for example, in the Constitution of the Fifth Republic, the President has a term of seven years while the legislature's term is four years. Such a long term can make the President a real centre of power. While the government in France is responsible to the legislature and may even be dismissed by it, the President is not so responsible. In the referendum held on October 28, 1962, General de Gaulle got a constitutional amendment approved by the people under which the President in future will be elected directly by the voters. That will further enhance the status, the dignity and even the powers of the President. The Constitution of the Fifth Republic, as amended in October,

1962, therefore, makes the French system more Presidential than Parliamentary.

THE COLLEGIAL EXECUTIVE

In broad terms there are three ways in which the Legislature and the Executive can be organised. (1) they can be combined in the hands of a Monarch or dictator; (2) the two functions can be separated as they are in both Presidential and parliamentary governments to a more or less deg [illegible] combined in an assembly. [illegible] of the plural, or collegial, [illegible]

[illegible] ıder this theory, powers are concen- [illegible] is no separate executive; if there is a head of the state, he is a mere figure-head; there is no separate government. Government here is the name given to a Committee or Commission of the Assembly which actually controls the administration. The Government, in fact, is a mere creature of the assembly. This type of government has two varieties—one found in Switzerland and the other in the U.S.S.R., and other People's Democracies.

In Switzerland, the Federal council consists of seven persons and is elected for four years by the two Houses of the Federal Assembly. It is provided that the members of the two Chambers cannot be members of the Federal Council at the same time. Not more than one Federal Councillor can be elected in one Canton. The seven [illegible]

its own members. Every Federal Councillor is also deputy for another department. The powers which the Federal Council exercises are its own powers conferred by the Constitution directly. This is different from the position in Britain or India where the Ministers represent some other supreme executive in the state. The powers of the Swiss executive are original powers.

While in parliamentary states the ministers are appointed formally by the head of the state and the Prime Minister [illegible]

agues. Each member receives and holds a separate commission. The tenure of office of a federal councillor does not depend on the mercy of the President. He neither appoints him nor can he be forced to resign by him even though there may be disagreement between the President and his colleagues. Nor does the tenure of the Council depend upon the vote of the legislature. In theory, they can be dismissed by the legislature and may be forced to resign but as a matter of usage it never happens even when their

measures are defeated in the legislature or even when their policies are rejected by the people at a referendum. Thus, the Swiss executive does not rise or fall with the measures it advocates.

Again, it does not depend upon the support of a solid party majority in the legislature. It consists of representatives of different political parties. There is, therefore, no collective responsibility or solidarity or homogeneity. The strength of the various parties in the federal council does not correspond with the strength of the parties in the legislature. Its members are elected not only from different political groups but even from groups which may be fundamentally opposed to each other. It differs from the usual coalition ministry of France because in Switzerland even in normal times the Council has contained representatives from all the principal parties in the legisalture. Thus, the Swiss Federal Council may be said to be a National Commission, whose members have not come together after having previously agreed to work out common programme or a common policy arrived as a result of compromise. Its members hold divergent views on questions of public policy and they are under no obligation constitutionally or conventionally to agree even on important questions. Sometimes though rarely, they even express their disagreement publicly in the legislature by speaking on the opposite sides of the issue. But generally before giving out in public, a compromise is attempted and they try to act as one collective unit before the legislature.

It must be emphasised that the difference in the Swiss Federal Council are seldom more acute than the differences of opinion displayed sometimes within the British Cabinet which usually consists of one single party. In Switzerland differences of opinion, however, do not lead to anybody's resignation. Whenever they arise and whenever they cannot be adjusted by mutual compromise, they are left for adjustment by the legislature and when the legislature arrives at its decision in the matter at issue, all the councillors bow to its will. A Cabinet crisis in these circumstances is, therefore, ruled out. Violent and rapid changes of ministries which is one of the most serious indictments against the French political life never occur in Switzerland. In both France as well as Switzerland there is a multi-party system, but in the case of one, the result has been instability, and in the case of the other, the outcome has been national strength.

The S [illegible] ficient and its constitutional position [illegible] one of the most conspicuous successes [illegible]. It combines responsibility with stability or permanence, a plural executive with the merits of a unified executive. It enables the country to keep in office her ablest [illegible] differences. [illegible] for the ful [illegible] continuity. The whole Swiss experiment is marked by a great deal of mutual confidence and intimate co-operation not only

amongst the members of the federal council but also between the federal council and the federal legislature. Since it contains representatives of all the principal parties in the legislature, it has a broad base and is independent of the need of a serious type of opposition which could successfully challenge its position and authority. The certainty of re-election of its members relieves them from undue political pressure and shields them from political temptations. As Lord Bryce put it: "Switzerland is the only democracy which has found a means of keeping its administrators practically out of party politics." When the members of the Federal Council retire at between 60 and 70, they return to their home cantons and with a tremendous feeling of satisfaction they take up social and welfare work. In the words of Hans Huber "a large number of federal councillors have been and remain men of the people, if only, because inspite of the dignity of their office, they have never sought to deny their origin. It is told of a federal councillor that when he was asked why he travelled IIIrd class, he replied, : 'because there is'nt a IVth'. The same is also said to have refused to put on fancy garb to meet the German Kaiser in 1912, because it was unusual in Switzerland."[1]

It must be remembered that the Swiss Federal Council despite a great diversity in its composition, is as a rule, united in all expressions of opinion. It is very seldom when members contradict each other. The Federal Councillors have often shown remark- [illegible] political parties. In its [illegible] often appoints Sub-com- [illegible] t policies. In each department there are independent sub-sections which have to do more and more current work. The Council performs executive as well as legislative functions. It is responsible for executing federal laws and often has to issue regulations for the purposes. In case of emergency the Council has been given extraordinary powers, as in 1914 and 1939. In a number of administrative disputes the Council also exercises judicial functions.

It may thus be said that in the Swiss type of convention or collegial executive there is no separate ministry on parliamentary lines. In fact the executive is not separate. There is no President either in the American sense or in the Indian sense; there is no Prime Minister either. The government is government by Committee. The President is merely a figure head as in Switzerland only responsible for receiving foreign ambassadors and performing a few ceremonial functions. The convention type of executive lays stress on the accurate reflection of the popular will in the legislature. Theoretically therefore there would be no need for a Second Chamber to work as a brake on the lower. The Norwegian Storting to which we have already referred in an earlier chapter and which owes most to the convention thought of the French revolution has always been in some sense unicameral. [illegible]cameralism in fact is the most important contribution of the

[1] [illegible] *rland is governed*, p. 52.

convention theory of executive. If in a convention type of state such as Switzerland, and also the U.S.S.R. there are two Chambers they are wholly the consequence of a federal system dictated by the circumstances of a diversity of nationalities, the Upper House representing Cantons or Union Republics. A hallmark of the convention executive is that it cannot dissolve the legislature. Here the legislature has a right to convene itself and to pronounce its own dissolution. The legislature, therefore, is supreme and this theory of legislative organisation is accompanied by the doctrine of the sovereignty of the people. In Switzerland for example law and treaties must be submited to a popular referendum provided 30,000 active citizens or eight cantons demand it. And if a presidential or parliamentary state adopts similar devices to test popular feeling it is only responding to convention influence as a social theory.

In the U.S.S.R. and other Peoples' Democracies the principle [illegible] important changes. The [illegible] some respects to parlia- [illegible] marked convention influence. As we stressed earlier the central thread of the political system of the U.S.S.R., is supplied by the C.P.S.U. Under Article 30 of the Soviet Constitution the highest organ of the state power in the U.S.S.R. is the Supreme Soviet of the U.S.S.R. This is a typical idea of convention type of state. The constitution also designates the Council of Ministers as the highest executive and administrative organ of state power responsible and accounable to the Supreme Soviet for its acts. This, again, establishes, the supremacy of the legislature. In practice however the Council of Ministers would contain the highest leaders of the C.P.S.U., and would, therefore, actually guide and control the Supreme Soviet which meets only for about a fortnight in the whole year. The Supreme Soviet, therefore, is not in a position to ensure the responsibility of the Council of Ministers in any detailed fashion. It is a bulky body and its constitution can hardly enable it either to draft bills, or to exercise any effective supervision over the executive. In legislation as well as in policies the initiative is, therefore, left in the hands of the Council of Ministers. During the period when the Supreme Soviet is not in session its works is carried on by its Committee—the Presidium elected by the Supreme Soviet. The President has the authority of acting as a ceremonial head of the state. Foreign Ambassadors present their credentials to it. The Chairman of the Presidum who is called as the President of the Soviet Union, acts on its behalf. In Czechoslovakia, the position is slightly different for, here the President has much the same authority as a parliamentary President, and he has even the power to appoint the Prime Minister. In the German Democratic Republic the head of the state (President) is merely a figurehead and his duties consist solely of promulgating laws, signing treaties, receiving ambassadors; representing the country in international relations and exercising

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The general policy is laid down by the party Presidium and the details are worked out by the Council of Ministers. Collectively-again the Council of Ministers is responsible for drafting and super vising the budget of the Central Government, planning national defence and maintaining internal order. It is vested with the power of exrcising general control in the spheres of relations with foreign states. It can set up Commissions and other agencies for the discharge of its duties. It is empowered to annul the actions of the constitutent republics for conravening the laws or decrees of the Central Government. It supervises and co-ordinates the work of administrative agencies throughout the Soviet Union. The initiative and legislation comes from it. In 1957 Mr. Khruschov introduced a drastic reorganization of the ministries in the direction of decentralization. Under this 25 out of 52 ministries were abolished, 4 were merged into 2 and only 23 were kept intact. To provide for broader representation, 15 Premiers of the Constituent Republics were included in the Council of Ministers. To give greater stress on planning the Chief of Gosplan the State Planning Commission was made first Deputy Premier and several of his colleagues were put in the Council of Ministers with full ministerial status. The functions of the dismantled ministries were allotted to Economic Councils in 92 districts and to the State Planning Commission.

Can we, then, call the Soviet executive as collegial or plural? [illegible] native. The [illegible] e creature of [illegible] l is merely a [illegible] legislature. [illegible] ly when the [illegible] t, at all levels in the U.S.S.R. the collegial principle exists at least theoretically. The goverment are responsible to the legislnture. But, then, the substance of power is neither in the hands of the legislature nor in the hands of the executive, but lies elsewhere, Really speaking there are two basic features of the Soviet executive which distinguishes it from other types and which prevent a student of Political Science fro [illegible] cat [illegible] of [illegible] to the Communist party. In some respects in a formal sense there exist the features of parliamentary type of executive—for example the theory of ministerial responsibility. But, in fact, the Ministers are responsible not to the legislature but to the party which is the elite of the working class. The Marxist constitutional theory has no place for the doctrine of separation of powers which it condemns as an instrument of reactionaries. According to the communist theorists the doctrine of separation of powers "allows [illegible] ive branch of government [illegible] through a freely elected [illegible] eally assumes an identity

of inerest between all branches of government once they are in the hands of the working class. Such an identity does not conform to the experience in other countries and if it has really been achieved, it must be pronounced as an amazing triumph.

RELATIONS OF THE EXECUTIVE WITH THE LEGISLATURE AND THE JUDICIARY

We have already examined the relations of the executive with the Judiciary in a previous Chapter. The main principles may, however, be recapitulated. The executive is responsible for appointment of the Judges; it has to enforce judicial decisions and judgments of the Law Courts, and it has the power of pardon and reprieve. Judicial decisions, which are not in conformity with the policy of the executive may, however, necessitate the passage either of a new law or a constitutional amendment. It should be realised that such a law or constitutional amendment is not a disrespect to the Courts of law. The executive can alsc ask for the opinions of the highest Court on matters of high public policy. The executive head cannot be sued in Courts of law. The judiciary in its turn can challenge the validity of laws and ordinances in countries having written constitutions. Even in a country like England, the judges, as we have already noted, have important law-making power. Finally, the judiciary can criticize the executive officials and, in general, serves as a brake on the administration.

The relations of the executive and the legislature are more intimate and therefore more complex. The executive is responsible for summoning, proroguing and dissolving the legislature. Laws passed by the legislature have to be ratified by the head of the state. In parliamentary democracies the head of the state makes the speech from the throne. He can send messages to the legislature. He can also make laws directly in the form of orders, regulations, ordinances or orders in council. The executive exercises control over money which is really a legislative power. In parliamentary democracies this control is very intimate; in the United States the legislature is stronger than the executive with regard to money matters. Most of the legislative powers in parliamentary democracies are really exercised by the Executive. In fact, Ramsay Muir has gone to the extent of calling the cabinet a dictator. On the other hand, the legislature also exercises executive functions of an important nature. It can elect the exe-

every one expects them to work together as a team to promote the

good life. While the legislature must transmit to the executive the impulse that puts the law on statute book, the executive must be able to turn its experience in administration to the legislature. Indeed the question whether a particular law is workable or even desirable may turn on the data and experience accumulated by the executive in trying to enforce it. The legislature, in the nature of things, does not possess requisite knowledge of all the factors involved in a conflict of interests which has led to the tensions or social abuses, which in their turn, have resulted in a certain law. Thus, most of the laws are vague and are in the nature of instructions to the executive to exercise a discretion and experiment with alternative solutions. The executive has to make detailed rules and regulations which are tentative laws. We have in fact examined the whole field of delegated legislation in an earlier Chapter. In almost all the modern states, communist or non-communist, the relationship between the executive and the legislature is very close.

In Britain, the Cabinet which is the real executive, is called a hyphen which joins and the buckle which fastens the legislative branch of the constitution with the executive. On the one hand, it is a committee of the legislature exercising all its powers, and, on the other, it is a committee of loyal ministers of Her Majesty on whom have devolved all the Royal powers. Through it the administration is linked up with the legislature and through the legislature, to the people. The impulses that move the one also move the other and the administrative experience gained by the executive, becomes readily available to the legislature. Behind these forms stands the party which links the executive and the legislature. The Prime Minister and his colleagues being the leaders of the majority party in the House of Commons, have come with a programme, a disciplined majority to support them, and a mandate from the electorate to use that majority in the implementation of that programme. Lest the party discipline should weaken, the cabinet in Britain can wield the big stick—the power of dissolution—to discipline the recalcitrant members of the House. It is a well-established convention in Britain that the Monarch would be acting unconstitutionally if he were to refuse a dissolution demanded by a Prime Minister. A new election will involve a lot of expense, worry and what is more, uncertainty in the results. This weapon, therefore, is very effective and with its help the executive can always control the legislature. The British cabinet, furthermore, holds a complete monopoly of legislation and has at its beck and call all the information, experience and expert knowledge of the civil service which is as loyal to one government as to another. Subject to minor qualifications a Cabinet can always secure from the parliament the legislation it wants, and can always prevent the enactment of laws it does not want. All the laws, therefore, are the creature of the government and every cabinet will do the utmost to enforce vigorously all the laws enacted. The legislative programme in Britain is, therefore,

organic and coherent. The tight party organisation and discipline which secures to the cabinet control of the legislature, is also responsible for giving a popular and democratic complexion to the cabinet and to the Prime Minister. When a voter is voting for the Conservatives, he knows that he is voting for Macmillan, and in the case of the labour party the voter can be absolutely certain as to the leader of the labour party for whom he is voting (the leader of the labour party is formally elected by the party). Thus, the Prime Minister can be said to be elected by the people, and give a popular mandate in order to implement the declared policy of the party. This brings the cabinet into a direct relationship with the electorate. In the nature of things, therefore, the House of Commons has lost its pre-eminence. One need not lament and shed tears of blood over this development. This is inevitable in the highly complex industrialized society we are living in. At one time, democracy stood for the triumph of the Parliament over the King; a little later it stood for the triumph of the House of Commons over the House of Lords; and at present it stands for the triumph [illegible]er parliamentary government. If there is no [illegible] no sanctity ir [illegible] What is sacred is the sovereign will [illegible] secured through party government. It is for this reason that the average member of Parliament has lost his independence and his influence on legislation. Once a whip has been issued, his tail goes down and he is grimly compelled to ditto the party line. On this reasoning, just as the Monarch and the House of Lords have become dignified parts of the constitution, so the House of Commons is also more or less an ornamental element in the constitutional system.

This, of course, is an extreme view. As we argued in the Chapter on the Legislature, the value of a legislature today, lies in the guidance which it can provide to the executive. The substance of power it cannot have; it belongs to the executive, which is one indispensable element in the government. The state, today, is positive; its powers are constantly increasing because it is expected by the people to do more and more, not that the government is eager for more and more power. In the nature of things the people increasingly believe in collective action. The executive not only has an automatic majority which can be disciplined through dissolution; it controls all the means of propaganda. It alone can obtain increasing efficiency in the administration. Its power is the power of the party and the party itself is a structure of power. In that structure there are parliamentary leaders, diverse interests and the rank and file of the party supporters. The power of the party leaders is always contingent on their holding the leadership of the party and securing a majority for it at the next election. If they are to survive, they must quickly respond to pronounced trend of opinion within the party or in the electorate. They may indeed anticipate them. The case or

difficulty with which they hold majority support in the House of Commons is the measure of their success.

The Cabinet, therefore, cannot be said to be a dictator. It is limited on all sides by cofines which can never bind a dictator. It has to work within the frame work of public opinion and pressure of Interest Groups and within the limits imposed by party programme and party discipline. It has to face criticism inside and outside the parliament. It has to run the gauntlet to debate. The fear of a possible electoral defeat is an ever-hanging sword of Damocles on its head. It has to function within the limelight of publicity focussed by the Fourth Estate. Sooner or later it will have to answer questions which can be evaded only for some time. Its failure will be the opportunity for the opposition. At times it has to make concessions to the critics and has to yield to pressures from members of its own party. Moreover, even if the opposition cannot do much to defeat a government the very fact that it is there in the parliament to oppose the government, is sufficient inducement to it to behave in a reasonable manner. It is repeated trials of strength between the horse and the fence that keeps the horse in the pasture but the fact that the fence is there and the horse knows is of central importance. The party majority can never be automatic, let alone brutal, for, after all in this majority are normal human beings who have ideas, convictions and a sense of responsibility. The influence of the opposition as well as the party followers of the Cabinet over the cabinet decisions, cannot be measured by counting the number of clashes between the cabinet and the House. Those who accuse the cabinet of dictatorship probably do not realise the alternative to a strong cabinet. We repeat that the choice today is no longer between the executive and the legislature; it is between whether policies of the country will be framed within the councils of the party or on the floor of the legislature. In this situation there can be only one choice and that is in favour of the party. The real danger today, therefore, does not arise from the concentration of the executive and the legislature. It arises from the fact that it is becoming more and more difficult for the electorate, the rank and file of the party, and even for members of parliament to understand what transpires within the party frame-work and what factors are involved in the policies which the party leaders work out in collaboration with the army of experts in the civil service. But this problem is not related to the forms of government; its origin lies in the demands for governmental action. The remedies suggested by Ramsay Muir—Proportional Representation, for example—are completely beside the point. You simply cannot hammer a peg in a shelf in order to repair a door frame.

POSITION OF FORMAL EXECUTIVE IN INDIA

What we have said with regard to Britain, is equally u all countries. In India, during the last 19 years after the dence, the centre of attention is always the executive, it is domestic policy or questions of defence or foreign

The Congress party's domination has been almost unchallenged at the Centre as well as in the States. Institutionally, the President, the Council of Ministers and other executive agencies have worked in close conjunction with each other. The President, on the whole, has functioned as a constitutional head in the Indian Union. In November, 1960, President Rajendra Prasad raised a nationwide controversy on the question of the powers and functions of the President in the Indian Constitution, when he called upon the Indian Law Institute to examine scientifically how far those powers were identical with those of the British Monarch. The debates of the Constituent Assembly, the way the President has functioned in practice in India, the recognised constitutional practices and the various provisions of the Constitution of India leave absolutely no room for doubt that the President must necessarily act in accordance with the advice of the Council of Ministers. One may usefully refer to the Constituent Assembly debates[1] and find that the intention of the assembly was to put the President in the position of the British Monarch. The advice of the Council ... on the part o... of Ministers will ... and will make the President liable to impeachment.[3] The import, of Article 74 (i) of the Indian Constitution is thus, clear, and it is, that the President must invariably act on the ministerial advice. Ministers are responsible to the House of People; they represent the people and reflect their views and they have to defend actions of the government before the people. If the President, therefore, acts contrary to the advice of the Council of Ministers, his actions cannot be regarded as in conformity with and subject to the will of the elected legislature. The constitution does not place the President over and above the people. Within the framework of the Constitution it is the parliament which is supreme. The President is enjoined to have a government which enjoys the ... House. Under Article 78(a), it is the Council of ... ns and the Prime Minister has ... the President. In reaching ... d can have no say. The term

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1 *Constituent Assembly Debates* Vol. IX, p. 988.
2 *Ibid.* Vol VII, p. 974 and *Ibid.* Vol. X, p. 269.
3 *Ibid.*

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of Ministers in India will also function as one unit. The theory that the British Monarch is the guardian of the Constitution is out of date. It is the Cabinet which is the master of the constitution. Similarly, in India it is the Council of Ministers at the Centre and in the States which retain the substance of power. With substantial powers in their hands, the Ministers easily control the legislatures. At the Centre the personality of the present Prime Minister is an over-riding factor. He is considered not merely as the leader of the Congress party but he is looked upon as the national leader. For the last ten years we have been trying an experiment of planning in India. And planning has meant more and more authority in wider and wider spheres to the Union Government. The legislature therefore, cannot do more than discuss the proposals and policies formulated by the executive. In short, the position of the executive and the legislature in India is more or less similar to what they have in Britain. The difference is that in Britain because of well-established traditions and because of an effective opposition, the legislature can always exert a greater pressure on the executive than the Indian parliament can do.

In the United States, as we have earlier noted, the executive and the legislature are constitutionally separated. That would mean that the legislature is cut off from any direct access to the information and experience that the executive accumulates; and the executive cannot participate directly in the framing and pushing of legislation. The terms of both are fixed by the constitution and cannot be ordinarily cut short. The legislature cannot pass a vote of no-confidence against the executive; the executive cannot dissolve the Congress. The Congress can control the President through its control of appropriations, its committees of investigation, its powers to confirm appointments and treaties, and through the enactment of laws in such detail that they limit the executive to exactly prescribed duties. The executive in its

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that these powers may be used are sometimes effective. The patronage basket of the President is very wide and he can use it as a lever on the Congress. In the United States the formal constitutional relationships, therefore, tend to work against the coordination between the executive and the legislature which is so important for the efficient functioning of a government. Occasionally the tension between them continues. In times of emergency the executive, of course, can control the Congress. But normally, sometimes the President can be in control of the Congress, and at times the Congress can assert its own leadership. Some observers have even read some sort of oscillation between presidential leadership and congressional leadership with a great regularity.[1] In general, one can say, that most of the time it is the

1 Pendleton Herring : *Presidential Leadership*, p. 12.

Congress which leads although its leadership is divided between the Congressional Committees where lobbies and sectional interests launch all kinds of bills. The President elected by the country as a whole and representing the entire nation, tries to rally his party in the Congress in a bid to check the more cynical bargains through his veto. He may or may not succeed. In fact he cannot always prevent the enactment of laws he does not like. The situation can be worse still if the President belongs to one party and the Congress to another, although even when the President's party is in majority in the Congress it may often happen that either its leaders are not in sympathy with him, or they cannot control their followers.

In Canada, the pattern of relationship between the executive [illegible]

it has vast patronage. But there are a few differences between Canada and Britain which may be noted. In the first place, party discipline is not so tight as in Britain. A member in Canada therefore, believes in maintaining his hold on his constituency and if he can do it, the central organisation of his party will have to give him the ticket. Secondly, the Canadian Cabinet is more amenable to legislative pressures. But these differences are minor. The members of the Canadian Cabinet are ambassadors of provinces and sections as well as national leaders. "While they have a large share in framing national policies, they also impose some sectional reservation on it. They get the disciplined support of their party in the House of Commons, because they do not ask too much. They get the disciplined support because the executive and the legislature are fused, as in Britain, and they do ask too much because the federal political parties are loose federations of provincial parties as in the United States."

The key to the relationship between the executive and the legislature lies in the sphere of finance, for, he who controls the purse, controls everything. This is a question, we have already examined in detail in the last Chapter. It is obvious that in Britain and in other parliamentary democracies it is the cabinet which holds the last word in finance. The members of parliament are generally ignorant of the complexities of finance. Millions upon millions of pounds are always voted in a hurry. The Committee of the Whole House has to finish the job in 26 days. No increase in expenditure can be moved by a private member and any proposal to reduce the expenditure will be opposed by the Cabinet with full force that it commands. Pressure may, of course, persuade the government to modify its financial proposals, but it is unknown for the House openly to force a revision. In the sphere of taxation again, the Cabinet is the complete master and nothing establishes this mastery so much as the fact that the changes in taxes proposed in the budget speech come into effect immediately after the budget is presented. All that the legislature does is a

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In Canada, the pattern of relationship between the executive and the legislature is similar to that in Britain. The cabinet is the steering wheel of the ship of the state; it prepares the legislative programme and formulates policies; it has the power of dissolution; it has vast patronage. But there are a few differences between Canada and Britain which may be noted. In the first place, party discipline is not so tight as in Britain. A member in Canada therefore, believes in maintaining his hold on his constituency and if he can do it, the central organisation of his party will have to give him the ticket. Secondly, the Canadian Cabinet is more amenable to legislative pressures. But these differences are minor. The members of the Canadian Cabinet are ambassadors of provinces and sections as well as national leaders. "While they have a large share in framing national policies, they also impose some sectional reservation on it. They get the disciplined support of their party in the House of Commons, because they do not ask too much. They get the disciplined support because the executive and the legislature are fused, as in Britain, and they do ask too much because the federal political parties are loose federations of provincial parties as in the United States."

The key to the relationship between the executive and the legislature lies in the sphere of finance, for, he who controls the purse, controls everything. This is a question, we have already examined in detail in the last Chapter. It is obvious that in Britain and in other parliamentary democracies it is the cabinet which holds the last word in finance. The members of parliament are generally ignorant of the complexities of finance. Millions upon millions of pounds are always voted in a hurry. The Committee of the Whole House has to finish the job in 26 days. No increase in expenditure can be moved by a private member and any proposal to reduce the expenditure will be opposed by the [illegible]

[illegible] again, the Cabinet is the complete master [illegible] establishes this mastery so much as the fact that the changes in taxes proposed in the budget speech come into effect immediately after the budget is presented. All that the legislature does is a

post-mortem. To a lesser extent the executive also controls the accounting and the audit. The Treasury control exercised through an Accounting Officer in each department is, however, supplemented by the control exercised by the Auditor-General and by the Public Accounts Committee. In Canada, and in India, the position is similar to that in Britain. There are minor differences which are not of much account. In Canada, for example, the Treasury Board is a Committee of the Cabinet composed of the Minister of Finance and five other ministers who have a responsibility corresponding to that of the Chancellor of the Exchequer for settling the financial proposals subject to the final approval of the Cabinet. This responsiblity is not concentrated in a single minister as in Britain or in India, nor does the department of finance exercise such a keen supervision over the spending department as the Treasury in Britain or the Finance Ministry in India. Again the grip of the Canadian Cabinet on all aspects of finance is not as strong as in Britain, for, in Canada, logrolling behind the scenes often affects such matters as the revision of the customs and tariffs. The most remarkable difference between Canada and England, however, is in the use made of the Public Accounts Committee. As in the United Kingdom. the Canadian Auditor-General examines the public accounts and makes an annual report to the parliament. For many years the Public Accounts Committee of the Canadian House of Commons just did not function. From 1929 to 1939 it never met. From 1939 to 1945 it was quite active, but since then it has again receded in the background. The Committee is too bulky (50 members) and the Chairman and the majority of its members are yes men of the government. They are more concerned to obstruct than to assist investigation. [illegible]

ORGANISATION OF THE EXECUTIVE : PRACTICE

It now remains for us briefly to examine the organisation and structure of the executive in countries like Britain, the United States, India, France, Canada and Australia. The general organization of the executive in Switzerland and the U.S.S.R. we have already surveyed. The structure of the executive in Britain, India, and Australia follows more or less a similar pattern as we have already seen. In France, there is a combination between the parliamentary and the presidential types of governments; and in the United States of America, the executive is the model of the presidential type. As we stated earlier, we can analyse the position of the executive under three main heads—the Nominal Executive or the Chief of States, the Real Executive or the Executive Agencies like the Cabinet; and the Permanent Executive or the Civil Service.

THE BRITISH MONARCH

The Chief of State in Britain is the Monarch who at one time, had unlimited and absolute powers. Gradually, however, the

King was put in commission and was institutionalized. At one time, on the death of one Monarch there used to be inter-regnum, during which all law was dead. With the march of time this state of affairs became intolerable and the successors of the dying monarch was deemed to be on the throne the moment the former died. "The King is dead, long live the King" became an accepted principle. In the 17th century, the Civil War and the Glorious Revolution destroyed the hegemony of the King and from 1688 onwards he started exchanging influence for power. The difference was now made out between the King and the Crown. The powers of the former definitely declined, those of the latter were now on the increase. The emergence of the Cabinet, the democratization of the House of Commons the decline in the position of the House of Lords, the rise and growth of the party system and the resulting supremacy of the House of Commons the development of administrative law and the growth of administrative tribunals and the increasing efficiency and ability of the civil service—all these factors tended to augment the powers of the Crown. Out of the wreck of his former pre-eminence the King has been able to save what Bagehot called the right to be consulted, the right to encourage and the right to warn. All the powers which belonged to him are now exercised by the Crown. The Crown, literally speaking, is an inanimate object which is kept in the Tower of London but by the simple process of using a capital letter in writing it they make it stand for the Kingship as an institution. The visible and concerte embodiment of the Crown is the Cabinet or perhaps the Cabinet in conjunction with the permanent civil service. Thus seen, the Crown is the supreme executive authority in the state. Inspite of the fact that its powers were cut down by obligations arising out of the contractual documents such as the Magna Charta, by prohibitive legislation such as the Bill of Rights, and by the principle of disuse, in recent years they have constitutionally been enhanced. The enhancement has been brought about partly by [illegible] partly by legislation [illegible]

[illegible] any time, is legally left in the hands of the Crown), but also from statute. Many of these powers rest neither upon prerogatives nor on statutes but were originally derived from prerogatives and later on defined or restricted by statute. The Crown is responsible for the enforcement of all national laws, appointment of all high officers, directing the work of administration, removing officers except Judges, and conducting the country's foreign relations. All ambassadors, ministers and consuls accredited to foreign states are appointed in its name and the diplomatic represenatives of foreign states [illegible]

[illegible] are sent by the Crown. Negotiations with foreign

countries are carried on in the Crown's name. The Crown declares war and concludes peace and makes treaties. Important treaties which seek to alter the law of the land or involve money or cession of territories or treaties of high moral import have to be ratified by the parliament. The Crown is also responsible for exercising control over colonies, protectorates or Trust areas. It exercises power of pardon and reprieve. All law-making power is vested in the Crown. The Crown bestows the peerages and thus determines the character and composition of the House of Lords. It summons the parliament and prorogues and dissolves it. It can set in motion the process by which the new House of Commons is elected. All parliamentary business is transacted during the pleasure of the Crown. It is the officers of the Crown who guide and control the parliament; they prepare the Kings' speech, decide the order of bills, and explain and defend them. The assent of the Crown is necessary for a bill to be placed on the statute book. Orders-in-Council and the Royal proclamations are issued by the Crown. The Crown appoints the Judges, decides the appeals on the basis of advice of the Privy Council and is by common consent the fountain of justice. The Crown is also the fountain of honour and the head of the Church. The convocation of Canterbury and and York are made only by the licence of the Crown and their acts require assent of the Crown.

It is, thus, clear that there is hardly anything which the Crown cannot do. The term Crown, therefore, can never mean the King, otherwise England would be the worst form of dictatorship in the world. The King is merely a person without substance of powers but with a great deal of influence. The Royal succession is vested in the House of Windsor—a name adopted during World War I, in order to relieve the House of Hanover of any suggestion of German connection. It will be recalled that the Hanoverian line was based on the Act of Settlement of 1701. The law of succession is based on the rule of Primogeniture, with a male heir to be preferred to a female. The queen's consort may assist his wife in performing some of his official duties as at present. The coronation ceremony is held in Westminster Abbey, sometimes after a monarch's succession to the throne. In this ceremony the highest ecclesiastical dignitary, the Archbishop of Canterbury annoints and crowns the new sovereign and charges him with the responsibility of performing his duties wisely and faithfully and the monarch in turn swears to rule according to the laws and customs of the Realm. The Royal titles indicate that Her Majesty even now is the Defender of the Faith.[1] If the monarch is unable

1 Defender of the Faith was conferred on Henry VIII. "Empress of India" was introduced in 1876 but dropped in 1947. In 1949 further changes in the Royal titles were introduced when India became a Republic and Ireland cut all connections. The title of Queen Elizabeth is "Queen Elizabeth the II, By the Grace of God Queen of this Realm and all her other Realms and Territories, Head of the Commonwealth, Defender of the Faith."

to perform royal duties due to illness or travel, he appoints five Councillors of State to discharge the sovereign's office or such royal functions as may be specified in Letters Patent. Under the Regency Acts, 1937-53, the Counsellers of State are the wife or husband of the Sovereign, Queen Elizabeth, the Queen Mother and the four qualified persons next in line of succession to the throne. They exercise the delegated functions jointly, the quorum laid down in the letters patent of appointment is two. The Regency Act of 1953 provides that the Regent in certain circumstances shall be the Duke of Edingburgh. The Regency Act of 1937 also provides that no power to dissolve Parliament otherwise than on the express instructions of the Sovereign (which may be conveyed by telegraph) or to grant any rank, title, or dignity of the peerage may be delegated. The Royal Finances are regulated by the law of parliament. Until the end of 18th century there was no difference between the Royal finances and the Public Treasury. Under William III, however, the parliament began providing for the Royal Family in an appropriation known as the Civil List, so called because the appropriation to the King included the salaries of the diplomatic, administrative and judicial officers of the state a
To William III, the
year out of which £7 [illegible]
hold. The Civil List of William IV was £5,10,000, that of Victoria £3,85,000, Edward VII £4,70,000, George V £4,10,000. In 1951 a sum of £40,000 was added to it. In 1952 the Queen was provided a Civil List of £4,75,000, and her husband the Duke of Edinburgh a sum of £40,000. It is customary for parliamentary to increase the allotments to younger members of the Royal family as they

[illegible]

corridors total three miles. It is this place which is the centre of state activity although few of the millions of tax payers who largely support it ever enter its gates. But the Monarch who lives here has hardly any powers, for he or she is just a constitutional [illegible]

advised of major issues and they receive and return such counsel and caution as she cares to give them. The government may come and go but the monarch is there and goes on for ever. If to ability and opportunity he joins study and effort, his position obviously becomes exceedingly important. He is the pivot of the dignified part of the constitution, its intelligent head piece. His appeal is an appeal to sentiments which though impalpable are

yet real and strong. His existence excludes competition for the headship of society. He acts as a disguise, for he enables the real rulers to change without heedless people knowing it. He is the focus of patriotism and evokes loyalty and responsibility. He is the concrete and effective symbol of the personality of the state. He contributes element of colour—the royal purple and imperial scarlet. He is the unrivalled store house of political experience and is immensely popular with the masses of the people. He sets up the general tone and fashions of society. He provides the father image. He receives a tremendous mail-bag every day and the letters that pour in are a cross-section of his subjects and their problems Although he has no powers to interfere in matters outside his extremely limited jurisdiction, he can suggest and intercede and he does. He can influence in a very settled fashion the policy of the state and he has the opportunity to do it. As Laski has put it: "one prince is specialized to housing; another devotes his attention to industrial welfare; hospitals, the boy-scouts, homes for aged miners, the re-training of the unemployed, the value of the settlement movement, all receive their due meed of attention. And since every item of royal activity is blazoned forth by every device that modern publicity can utilize, there is an awareness of this activity different in quality from anything the Victorians knew. The Monarchy, to put it bluntly, has been sold to the democracy as the symbol of itself; and so [illegible]

Even in serious matters of state like the selection of the Prime Minister and the formation of government, the Monarch can play an important role. He can advise the Prime Minister about the inclusion of some and exclusion of others. In critical times he has a tremendous responsibility cast on himself, for he must have a government responsible to the House of Commons. In the critical days of 1931, he brought about what has been called a Palace Revolution. As long as a party has a clear majority *in parliament and that party has* an acknowledged leader the choice of the Prime Minister is mechanical. But if the Prime Minister dies or resigns and the majority party has no acknowledged leader, or if no party gets a clear majority, the power of the king becomes very real, as we have already said earlier. Formally the king has the power to dismiss his ministers and it is sometimes suggested that he may constitutionally exercise this power if in his judgment the cabinet, while holding support of the majority in parliament, has decisively lost support of the electorate. It is also sometimes argued that he may threaten dismissal as a means of securing the consent of the Prime Minister

1. *Parliamentary Government in India*, p. 392.

to a dissolution of parliament thus precipitating an election to
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the king may refuse the request of the Prime Minister for a dissolution if he has grounds to think that an alternative government
, possible.
ardian of
flout the
elements
of the constitution (such as the powers of the House of Lords) the king will be perfectly justified in intervening

But all these arguments are merely academic. If the king today were to dismiss a ministry arbitrarily or to refuse a dissolution asked for, or to impose a penal dissolution, or to veto a bill, or to operate as a guardian of the consitution, he will only succeed in precipitating a major constitutional crisis which will not only undermine the foundations of the political system of England but also put his own position in jeopardy. Convention and customs of the constitution have conclusively established the *principle* that the king must remain outside the frame work of active politics. If he were to try to get inside, he will cease to be "the father image." His neutrality will be openly doubted and widely discussed. If he dismisses a ministry which the people have placed in power, the issue will have to be decided, sooner or later, by the general election. If the people put back the same ministry again in power, the monarch will be in the most unenviable position of a master, who, after having dismissed a servant, has been forced to employ him again. And this ministry, after obtaining this success will very soon take steps to abolish the institution of monarchy itself. The truth is that in trying to guard the constitution the king may wreck it beyond repairs; in exercising his personal judgment on political question the king will be found taking sides, and if the political party that stood to gain from the king's intervention does not openly repudiate his action, it will be transformed ino a king's party—a return to the days of George III.[1]

It is doubtful if the king today is the golden link of imperial unity. The dominions today are autonomous and independent and if they have decided to stay within the Commonwealth · nations, it is certainly not because of monarchy but because more mundane ties. If the economic interest of different tries in the Commonwealth were to dictate their exclusion, will not hesitate in leaving the Commonwealth at all. truth is that the king today cannot exercise any one of prerogative powers which can enable him to play an active in British political system. He has influence, no

[1] Refer to Laski : *Parliamentary Government*, pp. 388-441 for a full these arguments.

the kingship survives today in England it is not only because kingship is part of the English tradition but also because it has not hampered the progressive development of the English society. It is true that on the whole his influence favours conservatism and that he is the symbol of the nation's past. But it is also true that today, monarchy is identified with the fundamental aspirations of the British people and that even the labour party does not want to abolish it. A titular head is indispensable for a parliamentary democracy, and if there is no king there would definitely be needed a President who may be more costly financially as well as politically.

THE GOVERNOR-GENERAL CANADA AND AUSTRALIA

In the dominions like Canada and Australia, the Chief of State is the Governor-General who no longer represents the British government today, but is the representative of the crown, holding in all essential respect [illegible] administration of public af[illegible] Her Majesty in Britain. L[illegible] ral opens, prorogues, and [illegible] to budgets. He exercises the prerogative of pardon and has the seldom-used power to refuse a dissolution of parliament. The constitutional practice that Her Majesty acts on the advice of responsible ministers also applies to the Governor-General and his appointment, therefore, is the dominion affair. In this case the ministers whose advice is taken, are not the British ministers, but are the ministers of the dominion concerned. Thus, in most of the cases today, the Governor-General of a dominion is a local man, the first being Sir Issac Isaacs apppointed in Australia in 1931. Similarly Canada and Pakistan also have had their own nationals as Governor-General.

It must be realised, however, that a Governor-General either in Canada or Australia, cannot hope to have the influence that the British Monarch has. The term of office is short and he is the creature of the Ministry in power. The resemblance between the Governor-General and the King is only superficial. The former cannot claim the prestige, the dignity and the antiquity which are naturally the King's. The real prerogative which is so important in Britain, can hardly be available to a dominion Governor-General. He cannot appeal to popular sentiment in the same magnetic way as the monarch. He may try to act as graciously as the king but he is still a substitute, a mere shadow. He lacks the magnetism of a patent symbol and mirror of the nation. Much of the king's influence dwells in the circumstance that to his people he is the custodian of social ethics. The Governor-General in Canada or in Australia can hardly substitute for the king in this respect. He can never claim to be an unrivalled storehouse of political experience. If the Canadian Government or the Government of Australia want to have honours bestowed

or war declared or plenipotentiaries appointed or treaties ratified, they have to advise the monarch and not the Governor-General to give the necessary authority. The passage of Seals Act in 1939 has, however, made it possible for these matters to be dealt with by the Governor-General if the consent of the king cannot conveniently be obtained. In short, the Governor-General is placed potentially at least at the mercy of his own cabinet, a subordination which makes assertions of independent opinions unlikely and any strong line of conduct impossible. His powers are purely nominal and are performed automatically on the advice of his cabinet. In the selection of a Prime Minister, he has hardly any discretion except in case of a sudden death or resignation of a Prime Minister or in the event of party conflicts. But even in such circumstances his selection will have to be sustained in the parliament. In Australia the Prime Minister died in 1945 and the Governor-General chose Mr. Francis Ferde as his successor. Within a few days the labour party caucus met and selected Mr. J. B. Chiefley as their new leader, an act which resulted in Mr. Ferde's immediate resignation and the appointment of Mr. Chiefly as the Prime Minister. Sometimes the Governor-General can act as a mediator or conciliator between the party leaders or between the dominion and a province. He is supposed to act as the social head of the country and to exercise leadership in the spheres of music, art, social service, public health, youth movements, history, literature, education, theatre and all commendable phases of national life. But in voicing his views even on these subjects the Governor-General must be cautious, should not hurt any party or organisation because all his actions and words are carefully watched and the cabinet is responsible for these. The opposition eagerly waits for an opportunity to attack the government. Earl Gray, the Governor-General of Canada, was vehemently attacked for expressing his views on such subjects as co-operation and Retail Merchants' Association. For the rest, the Governor-General is the ceremonial head of the government, opening parliaments, receiving foreign diplomats, performing routine functions going out on tours, and laying corner stones, listening to addresses from Municipal Boards, attending exhibitions and opening museums and hospitals. If he has tact and ability, he can exercise some influence, for, then the Ministers will take him into their confidence in all weighty matters. A man of talents and balanced judgment can offer suggestions, criticisms and alternatives. But he can do so only by remaining behind the scenes, avoiding any rumours that the Governor-General controls the progress of affairs. If he remains in one government for a full term of office, he may easily come to acquire much weight specially if ministers are unaccustomed to office. To advise one's own advisers in a most difficult and delicate job and only a man of extraordinary tact and perspective can do it with success. Even if he has certain reserved powers, they can be exercised only if a ministry is determined

to violate the Constitution and to destroy the well-accepted conventions of parliamentary government. For example if a Prime Minister after dissolution, returns with a minority and promptly demands another dissolution instead of resigning, he may be promptly dismissed by the Governor-General. Such a situation will almost never arise. Neither the king nor the Governor-General has a blanket authority to use his reserve power to correct the mistakes of his advisers. Each will serve his country best by jealously keeping that power for only those rare emergencies when nothing else is adequate. "Like the gold passing under the mattress it serves not by continued use but through its potential power to cope with emergencies. The successful household is one which never has the occasion to resort to it, yet which derives a feeling of additional security and well being by its mere presence and the knowledge that it can be used when disaster threatens."[1]

THE INDIAN PRESIDENT

With regard to the head of the state in India we have already stated earlier in this Chapter that his position is more or less similar to that of the British Monarch or that of the Governor-General in a dominion. The supreme executive power of the Indian Union is vested in him like a constitutional monarch. He follows the advice of his ministers tendered to him through the Prime Minister. The circumstance that he is elected indirectly for a short term, and the fact that in case of violation of the constitution he can be impeached by the Union parliament, go to establish that the President is constitutionally bound to accept the advice of the Ministers. The vast array of powers which are given to him under the constitution, is a proof positive of the fact that he cannot exercise these powers independently. No constituent assembly has ever established a dictatorship deliberately and intentionally. This, certainly, the Indian Constitution has not done. Under the Indian Constitution, the President can do everything which the Crown in Britain can do and we need not repeat it. Theoretically he can put his ministers and all the members of the parliament under arrest, can command the army and can establish terror in the country through ordinances. But then, this can be done by a dictator any time, constitution or no constitution. The Indian constitution expressly embodies most of the conventions which determine and regulate the relations between the head of the state and the cabinet including the principle of collective responsibility. The view expressed by Mr. Patanjali Shastri, Ex-Chief Justice of India, that the exercise of Presidential authority is limited only to the extent specifically mentioned in the constitution and that it cannot be further restrained by the application of precedents from other constitutions, is entirely his own. It does not stand a critical scrutiny at all. It cannot be substantiated either by what was said in the Cons-

1 Canadian Journal of Economic and Political Science, February, 1949, p. 93.

and the Governor exercised his option of reserving the bill for the consideration of the President, should the President acting on the advice of his Council of Minister, refuse to give his assent to the Bill? The problem that he has raised, is related not to the powers of the President but to the non-partisan character of the presidency. If the President were to refuse his assent to such a bill, Mr. Chanda argues, he would be surrendering his position of being above party politics. This argument, in our view, is extremely mischievous. Whatever the complexion of the government at the Centre or in the state, the theory of parliamentary democracy is that the head of the state must always abide by the advice given to him by his Council of Ministers. A state in the Indian Union has not been given the power of sovereign unit. In case of a conflict between the advice given to the President by his own Ministers at the Centre and by the ministers in a state government, the President will naturally be bound by the advice given to him by the former. The alternative to this will establish the royal road to dictatorship and anarchy.

THE AMERICAN PRESIDENT

In the United States of America, the Chief of State is also the Chief Executive. While the King of Great Britain reigns but [illegible] t governs but does not [illegible] ect but for all practical [illegible] e and as such he arouses antagonism as intensely as devotion. He lacks the divinity that hedges a King. In America it is the constitution which is the symbol of unity and not the President. And yet he is not merely the head of the Government but is also the chief of state and as such has to perform the legal and ceremonial functions of the King, open public buildings, inaugurate charity drives and the baseball season, receives Ambassadors and carries on with foreign countries. In this he is the symbol and spokesman of the entire nation. If there is any voice that speaks for all of the United States, [illegible]

of the officers necessary for the task in hand. The Senate, of course, shares in appointments to the higher offices; the lower offices are mostly filled by heads of departments under Civil Service Regulations. But this leaves a vast number of appointments in the hands of the President. Subject to Civil Service Regulations, he has the power to discipline and remove the executive officers of the United States. He is the master of his Cabinet, as we will shortly see, and there is very little which the President can shift to others. Every head of department insists on having a decision from the President on all important questions. All important and difficult

matters can be disposed of only when the President has been referred. In fact unimportant and less difficult ones can always be decided at the lower level. The White House Secretariat has a personal staff for the President. In any crisis that requires something to be done, almost everyone looks to the President.

Thirdly, the President is a legislator, influencing, guiding and co-operating with the Congress in the law-making process. He gives formal assent to the legislation and although his voting may be over-ridden by a two-thirds vote of the Congress. If he neither assents nor vetoes, the measure automatically becomes law after a lapse of 10 days provided that the Congress is still in session: if it has adjourned in the meantime the bill is killed by such inaction. (This is the so-called pocket veto of President F.D. Roosevelt.) In emergencies, he can call a special session of the Congress. A strong President can exercise tremendous influence on legislation. It was President Roosevelt and his advisers and not the Congress that framed the New Deal. Since modern legislation is necessarily vague and general, its detailed application depends more and more on executive rules and regulations which in America are framed by the President or by his subordinates. He can influence the Congress by moulding public opinion. He can reach the public through the radio and press conferences; in fact the White House has been called the biggest pulpit in the country. President Wilson was reported to have addressed three hundred meetings in the course of three months in the stormy days of 1920. President Coolidge thought it necessary to deliver 280 speeches to various bodies in the year 1925.

Fourthly, the President has a commanding role in making foreign policy, and upon his shoulders and his alone falls the supreme responsibility for decisions in international relations. As one authority has put it "Congress can legislate the country into isolation and the Senate can reject all entangling alliances. Yet the President actually conducts foreign policy and he may take irrevokable steps which in effect commit the country to intervention." If he cannot make treaties, he can certainly make executive agreements with foreign states which are as good as treaties. He can use his powers to recognise foreign government with decisive effect. He can make war inevitable. He is the Commander-in-Chief of the Armed forces.

Moreover with the passage of time more and more powers have fallen upon the President—powers in addition to those which were assigned to him specifically by the constitution. Early in the history of the United States he became a party leader. He is now the purveyor and moulder of public opinion. He is the caretaker of domestic tranquillity. In times of national calamities or disasters such as floods and earthquakes which can strike any society, even such a high society as America, the President sets in motion the machinery for relief. The era in which we are living is one of tension and violation and the main currents today, have

accentuated the longing for peace and security. The demand today, is the demand for economic stability. This is a demand which can be met only by the President. While the Congress remains the law-making body concerned with measures designed to maintain the economy on an even keel, the people look to presidential initiative in such matters of public economic policy as full employment, economic controls, fiscal policy and adequate housing. It is the President who has to inspire programmes designed to achieve a dynamic and growing economy. The advent of the welfare state and mixed economy have added newer and newer dimensions to the office of the President. Similarly, the extension of demo

presidential power.

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States as a leading nation in the world, has also enhanced the influence, prestige and powers of the President. Today American interests are global and the President is called upon to protect these interests whenever and wherever they are threatened. The threat may come from external aggression or from financial monopolies or military power. This is a situation which calls for strong and decisive action. It is, therefore, inevitable that the centre of power in the conduct of the nation's foreign policy must remain in the execution branch. As Dr. Warren writes: "The President in the 20th century is, or ought to be, a world leader. His forum is not only his own country, but the entire globe. He must direct policy within the United Nations Organization; he is the leader of a system of military alliances involving dozens of nations; he is the informal but nevertheless acknowledged leader of a coalition of free nation. For these reasons, personal diplomacy has become one of the phenomena of this era.........The President as world leader must possess a sense of history to be able to distinguish the ephemeral and transitory from the enduring, and he must have the combination of hardheaded practical sense with deep, philosophic understanding".[1] He must also have, as Harold Laski put, "not only a sense of the general direction in which he wishes to move, but also a sense of the direction in which the times require him to move."

In recent years there have, therefore, been many Presidents who are of the Lincoln type—bold and aggressive, asserting a vigorous leadership and exercising power to the fullest extent of the executive prerogative. Theodore Roosevelt initiated the open door policy and added a new chapter to the Monroe doctrine. Woodrow Wilson became the God-father of the League of Nations and opened new vistas in America's foreign relations. Franklin Roosevelt is almost a legendary figure and became a beacon of

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Truman doctrine,

1 *The American Review.* April, 1961, p. 90.

the Marshall Plan, the N. A. T. O., the Point Four Programme, and the U.S. action in Korea. In Kennedy we had a dynamic personality, having a shrewd sense of party politics and tremendous integrity, courage and energy. During the last two years of his office he had given a measure of his abilities as a world leader. The shifts in the American foreign policy which Kennedy introduced in the case of Congo and Cuba are almost revolutionary.

We may, thus, conclude that originally strong, the office of the American President has grown stronger and stronger with the march of time.

THE FRENCH PRESIDENT

France is a case where the President seeks to dominate the Council of Ministers in an unusual degree. The powers granted to the President by the new Constitution, over and above those held by his predecessor, form an impressive list. He has executive, legislative, judicial, and miscellaneous powers and functions, in addition to "exceptional powers". He appoints the Premier and terminates his functions when he presents the resignation of the Government. On his recommendations, he appoints other members of the Government and terminates their functions. He presides over the Council of Ministers and in this capacity can materially influence the decisions and policies formulated by it. He makes appointments to the civil and military posts of the State. He accredits ambassadors and envoys are accredited to him. He is the commander of the armed forces and has the right to preside over the higher Councils and committees of national defence. In his absence, the Premier is authorised to preside over these councils and Committees. When the National Assembly adopts a motion of censure,
of general
resignation
He negotiates and ratifies treaties and he is to be informed of all negotiations leading to the conclusion of an international agreement not subject to ratification. He nominates 3 members to the Constitutional Council and after retirement himself becomes an ex-officio member of this body. He appoints the President of the Constitutional Council. He presides over and represents the community and in this capacity shall be represented in each State of the community, and shall preside over its Executive Council. His legislative powers are wide, as we have already seen.

of the State."
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His position

and treaties, and of the independence of the judicial authority.

While the Indian President is not the real executive and does not preside over the meetings of the Cabinet, the French President has the undisputed right to do so. His power to appoint the Premier, in the context of the French party system, is very real and his emergency powers are extremely sweeping, unfettered by ministerial responsibility. These are clearly specified matters in which the President is not bound to consult, or abide by the advice given by the ministers. Under Article 19, "the acts of the President of the Republic, other than those provided for under Article 8 (first paragraph), 11, 12, 16, 18, 54, 56 and 61, shall be countersigned by the Premier, and should circumstances so require, by the appropriate ministers." The exceptions cover a wide variety of matters including dissolution, referendum on bills, messages to the legislature and exceptional powers. He can build up his own relations with the leaders of Parliament. He has tremendous initiative in foreign affairs. He is the ceremonial and dignified head of the nation. He is the sole judge to decide whether he ought to [illegible]
governs. [illegible]
elected dir [illegible]
Much, of course, depends on the personal equation and the present incumbent is well-known for his drive, energy, convictions, and firmness. With personal qualities of head and heart and with the wide powers he is granted, the French President can overshadow the Parliament, the Constitutional Council and the Council of Ministers. In France, if the Council of Ministers is the steering wheel of the ship of the State, to President is the steersman for, there the President governs, the Prime Minister carries out his policy and is answerable for it to the Assembly. The Premier, indeed, is a mere figurehead without sizeable political authority, a mere technician under fire from both Parliament and the President, and in case of conflict, between them, he would run the risk of being often replaced.

The only serious limitation on the President in France is the provision for impeachment in Article 68 of the Constitution. It is laid down that the President of the Republic shall not be held accountable for action performed in the exercise of his office except in the case of high [illegible]
is made extraordinari [illegible]
the two Houses of the [illegible]
balloting and by an a[illegible]
Houses. He is to be tried by the High Court of Justice". The corresponding provision in the constitution of the Fourth Republic [illegible]

of Ministers led by the Premier. In this division, the balance is tilted in favour of the President.

THE REAL EXECUTIVE : BRITAIN

Once the position is accepted that the real power of government in a democracy is not vested in the monarch, the logical corollary

Council of

h is subject

handful of

confidence of the Prime Minister. At one time the Privy Council used to be the nucleus of authority and it comprised the influential confidants of the king. At present it consists mainly of present and past cabinet ministers and its strength is 330. A few representatives of the Dominions are also included and a number of men of distinction in literature, arts, science and other fields of honourable endeavour are appointed by the sovereign on ministerial advice. Membership is a high distinction which is sparingly conferred. New Privy Councillors kiss the queen's hand and take the oath of allegiance and the privy-councillors' oath binding them to keep secret all matters committed or revealed to them. Every Privy Councillor has a right to act as the justice of the peace for any part of the country; a badge of distinction of all privy-councillors is the title of Rt. Honourable. Membership is life-long, although the monarch may strike a name from the list or a member may be dropped by Order-in-Council. Except when a new sovereign is to be crowned or on other solemn actions, the full roster of councillors is never called together. In fact, after the revolution of 1688 the Privy Council declined in influence and by the time of George, I, it was generall

the Privy Council. The meetings of the Privy Council lost their importance and utility, as the Cabinet became the recognised centre of affairs and sessions of the Council were confined to the subordinate role of officially recording the agreements and decisions which needed formal certification. At present usually the Privy Councillors of Cabinet rank are summoned to constitute the meeting, which is generally held in the Buckingham Palace. A few years ago an Order-in-Council made it possible for Council business to be transacted under emergency conditions in the absence of the sovereign. The authority legally functioning at a meeting is, however, not the Council alone, but the King-in-Council. The president of the Council is called the Lord President of the Council, who has heavy responsibility of a general character, as member of the government. Most of the business of the Council is done through committees—

Committees. If the committees

their recommendations must b

in less important matters, the decisions may rest with th committees themselves and they are then embodied in what are known as

Chancellor, ex-Lord Chancellors and Lords of Appeal-in-Ordinary although Lords Justices of Appeal and other members of the Privy Council who have held high judicial office are also asked to sit when business is heavy. Chief Justices and certain judges from other Commonwealth countries have usually been sworn in the Privy Council and may be invited to sit on the committee's boards.

In short, the Privy Council, is no longer an initiating or a deliberative body. Even its advisory role is extremely limited. Most of these functions have been absorbed by the departments which determine rules they severally promulgate. Its earlier deliberative functions have passed to the Cabinet. Decisions of the Cabinet are either taken to the Privy Council and assented to as Orders-in-Council or taken to the Parliament and approved as laws.

In Britain, today, there are four types of ministers—Heads of the Executive Departments, such as Chancellor of the Exchequer, Minister of Education *etc.*, ministers who are not incharge of departments such as Lord President of the Council and Lord Privy Seal, Parliamentary Under-Secretaries and Junior Ministers; and officials of the Royal household. All of them constitute the ministry. The ministry as a body never meets. Whereas ministers have duties as individual officers of administration, Cabinet members have collective responsibilities. The Cabinet meets as a body and its members deliberate and decide policies. Of course, all cabinet members are ministers but not all ministers are in the cabinet. While the usual strength of the Ministry is over 100, the usual strength of the cabinet is about 15. To sum up, the cabinet officer deliberates and advises; the privy councillor decrees and the minister executes. The three activities may be distinguished, even though it frequently happens that cabinet officer, privy-councillors and ministers may be one and the same person.

We have already referred to the historical development and to the general characteristic of the Cabinet in Britain. The Cabinet consists of members of the legislature of the same political views and chosen from the party possessing a majority in the House of Commons. It is responsible for prosecuting a concerted policy under a common responsibility to be signified by collective resignation in the event of parliamentary censure and acknowledging a common subordination to one Chief Minister. We have also referred earlier to the considerations which weigh heavily in the formation of a Cabinet, and to the role played by the Sovereign in the appointment of the Prime Minister. The Cabinet is the main spring of the mechanism of government. Its constitution [illegible]

wise be a heterogeneous collection of authorities exercising a vast

authority of functions. It provitdes unity to the British system of government". For all that passes in Cabinet each member of it who does not resign is absolutely and irretrievably responsible, and has no right after-wards to say that he agreed in one case to a compromise while in another he was persuaded by all his colleagues. It is only on the principle that absolute responsibility is undertaken by every member of the Cabinet who, after a decision is arrived at, remains a member of it, that the joint responsibility of ministers to parliament can be upheld and one of the essential principles of parliamentary responsibility established. All decisions are freely arrived at ana they are loyally supported by every body, being considered as the decisions of the whole government. There may be occasions in which the duties are of so vital a character that it is impossible for the minority to continue their support, and in this case the ministry breaks up or the minority member or members resign. The secrecy of Cabinet proceedings, originally based on the Privy-Councillors' oath and antecedent to collective responsibility is in any case the natural correlative of that collective responsibility. It would obviously be impossible for ministers to make an effective defence in public of decision with which it was known that they had disagreed in the course of Cabinet discussion.

Most of the ministers are important leaders of the party. They are men of talents, imbued with a sense of responsibility. The usual membership of the Cabinet is the reward of service in Parliament and would have been preceded by a considerable apprenticeship to the service of politics. "The competition for place, the rigour of the selective process, the eminence of the prize will assure the nation that every Cabinet will contain some exceptional men." The ministers are men of wide general understanding capable of seizing quickly the essential point of a problem and able to give a rapid decision. They must be men of judgment and have a knowledge of human nature which enables them to choose and rely on all able assistants. They have initiative, imagination and sound commonsense.

The powers and functions of the Cabinet are a matter of historical development, because, on the whole, the institution is extra-legal. On the one hand, it is the committee of the party having a majority in the parliament, on the other, it is a body of trusted advisers to Her Majesty. Its main functions are (a) the final determination of the policy to be submitted to Parliament, (b) the supreme control of the national executive in accordance with the policy prescribed by Parliament and (c) the continuous co-ordination and delimitation of the activities of the several departments of State.[1] Its powers are comprehensive—formula- [illegible]

1 *Report of the Haldane Machinery of Government Committee*, 1918 p. 5.

the steering wheel of the ship of state. It not only initiates legislation but it also controls the entire operations of the parliament. These functions, the Cabinet performs through its committees which are of three kinds—Standing, Adhoc and Informal. The Standing Committees include the Committee of Defence, the Legislative Committee, the Policy Committee and the Production Committee. The Adhoc Committees are appointed to deal with particular issues. Informal Committees of Ministers are set up from time to time. In 1951, Churchill undertook one of the most drastic reorganizations of the Cabinet Committees and for a time he managed to get along with a greatly reduced number. But before he retired practically all the older Committees had been restored under pressure of work. All Cabinet Committees, it should be noted, are primarily advisory in the sense that they investigate and report. These Committees render the cabinet procedure smooth. Cabinet meetings are usually held once in a week when Parliament is in session, usually in the morning so that there may be no conflict with the sittings of the Parliament. Extraordinary meetings can be called by the Prime Minister at any time. Meetings are usually held at the official residence of the Prime Minister—No. 10 Downing Street. They may also be held in the Prime Minister's room in the House of Commons. All proceedings are informal. Smoking is still prohibited. Side conversation cannot be carried on, but notes can be passed under the table. The guiding note of the Prime Minister is always there to create a sense of harmony. No rules or orders are observed and there is no fixed sitting arrangement either. No quorum is provided and only such ministers attend meeting, who are invited. Voting is rare and the Prime Minister usually announces the decision of the House. Compromise is the first and the last order of the day. Only matters of first rate importance are brought up for discussion in the cabinet. Unimportant matters are usually discussed by the departments concerned. A number of questions can be decided unanimously through the advice of the Cabinet Box, which is passed on from office to office with proposals and memorandum, to which assent is given by all. The Cabinet Secretariat which is the outcome of the two World Wars, is responsible for preparing the agenda of business and circulating all important papers to the Cabinet Ministers. It keeps the minutes of the Cabinet meetings, advises members of decisions reached in the meetings and serves the Cabinet Committees which give a preliminary examination to most of the issues which come before the whole body. During the [illegible] office expanded considerably so [illegible] there is now an Economic Section [illegible] The former maintains a constan[illegible] watch on economic trends and [illegible]

responsible for providing economy of time and co-ordination in policy and administration as well as the continuous review of important problems.

During the First Great War there developed an inner ring within the Cabinet, popularly known as War Cabinet. Upto the end of the year 1916 the whole Cabinet used to guide the war policy but Mr. Lloyd George found that the war could not be transacted with sufficient speed under such a large body. In 1917, he constituted a War Cabinet consisting of five to seven members. All the members of the War Cabinet excepting the Chancellor of the Exchequer were free from departmental duties which were left to the care of ordinary ministers. A series of special meeings of the War Cabinet were also attended by Prime Ministers of Dominions. When these Dominion Prime Ministers attended the

and himself took the office of the Minister of Defence in order to secure effective co-ordination between the three Defence Departments. Even in normal times there is always what is called as the Inner Cabinet consisting of those three or four ministers who are nearer the Prime Minister than others. This, in fact, is quite natural and inevitable.

Finally, we may refer to the position of the Prime Minister who occupies a position of exceptional and peculiar importance. It is he who is primarily concerned with the formation of a cabinet, with the subjects which the Cabinet discusses, with the relations between the Queen and the Cabinet and between the Cabinet and Parliament and with the coordination of the machinery of government subject to the control of the Cabinet.

By 1714 the House of Commons, the source of financial authority for the government, had fully accepted that the initiative in financial matters should come from the government of the day. Standing Order No. 66 of the House of Commons, adopted in 1713 provided (and still provides) that no money can be voted for any purpose except on the motion of a minister of the Crown. The leading position in the Cabinet came naturally to be associated with the Treasury and the name 'Prime Minister' was first applied to those who held office as Lord Treasurer or when the Lord Treasurership had been placed in commission after 1714, First Lord (Commissioner) of the Treasury. This office also had an intimate connection with the dispensing of royal patronage which, before the formation of modern political parties, was the main element in maintaining a government majority in Parliament.

The reigns of the first two Hanoverian monarchs (who were also Electors of Hanover) saw the development of an administrative centre apart from the King—in the chief of 'Prime'

Cabinet Committees; he has large powers of appointments and dismissals; and he has tremendous powers of supervision over other departments. His authority to advise the Monarch on the question of dissolution is absolutely unchallenged and in this he need not consult even his colleagues. He is the spokesman of the administion in the Parliament and in the country. He is mainly responsible for the administration to the Parliament and to the electors. He has to answer important debates. It is on his advice that real patronage is distributed and peers are created. Whosoever may be the Foreign Secretary, the Prime Minister's authority in foreign affairs is undoubted. He plays a leading role in negotiations with the foreign states and he attends major international conferences. All important papers of foreign office must pass through him. His visits abroad are covered with great care. He is the final Court of appeal in the Ministry—the chief mediator and arbitrator. He sets up the tone in public meetings and controls party organisations within the Parliament.

But with all these powers, he cannot be said to be an autocrat. He must not only show skill in debate, cogency in arguments, and mastery of details, but also sound judgment, understanding and ability to grasp the essential point at issue. He must possess the ability to hold a group of men together in harmony and with enthusiasm. His powers are great, but his own greatness will depend upon the restraint, moderation, adjustment and balance that he brings to bear on his task. In wartime he can become Chief of a vast war machine—Managing Director of a [illegible] t must never be forgotten [illegible] he will have to function. [illegible] 's within the party which [illegible] sovereign, who can tactfully influence his judgment, but there is also the existence of a powerful and organised opposition which is there ready to exploit every weakness and to provide an alternative government. The Leader of the Opposition and his principal colleagues form a group popularly known as the Shadow Cabinet, each member of which contributes an expert knowledge gained for the most part, by official experience to the task of directing criticism of government policy from the point of view of a party which is bidding in the support of the nation. Since the strength of modern party discipline makes the minister largely invulnerable to direct attack in the House of Commons, the criticism of the Opposition is primarily directed towards the electorate, with a [illegible] publicity through the daily publication of the reports of debates, and certain rights of initiative in the choice of subjects of criticism. In fact, there is no better system than this organised opposition which ensures that the indispensable function of criticism shall

be effectively coordinated and exercised in a constructive and responsible spirit. The leader of the Opposition is tomorrow's Prime Minister. He is paid a salary of 3,000 pounds a year charged on and payable out of the consolidated fund of the United Kingdom. No Prime Minister can afford to forget these limits on his powers and authority. He remains the Captain of a team, the whole of which is responsible to Parliament and the whole of which he has to carry with thim. If he is to maintain control over the House of Commons he cannot risk frequent resignations and dismissals nor weak and unconvincing support of policy by his colleagues on the floor of the house, for that will easily undermine the solidarity of the party majority. "The knowledge that they must all hang together or hang separately not only disposes them to earnest effort and agreement but also limits what the Prime Minister can do with his unquestioned pre-eminence. It ensures the fullness of discussion and candour and criticism that the President of the United States often fails to get in his Cabinet."

THE CABINET IN CANADA AND AUSTRALIA

The Canadian Cabinet, like its British counterpart, is based on the dual nature of the executive power—nominal and real. Like the British Cabinet, it is a conventional body recognised neither by law nor by constitution. Just as there is a difference between the Minister and the Cabinet in Britain, there exists such a difference even in Canada and in India. In Canada, there is also a Privy Council which is an officially recognised body consisting of persons chosen by the Governor-General on the recommendation of the Prime Minister. All members of the Cabinet are first made members of the Privy Council. Membership is for life so that all surviving ministers are within the Privy Council. The Canadian Privy Council has met only once since 1867(on July 1, 1937 to receive a message from the King announcing his formal consent to the engagement of Princess Elizabeth). Thus, it performs no function of a council, despite of its being mentioned a number of times in the Act of 1867 as an advisory body, to the Governor-General. Most of its functions have beer assumed by that portion of the council, which constitutes the Cabinet.

The Canadian Cabinet rests on two-party system and is characterized by homogeneity, collective responsibility, secrecy, and leadership of the Prime Minister. Its responsibility is the responsibility to the House of Commons, and this is an instrument of democratic control. Most of its members are from the House of Commons. The Canadian Cabinet has become, to a uniqde degree the grand coordinating body for the divergent provincial sectional, religious, racial and other interests throughout the the Dominion. Cabinets in other countries like Britain, and United States also have these traits but not over as wide a field or in compliance with the same rigid requirements. In Canada,

the Prime Minister's choice, therefore, is very much restricted. Every province must have at least one representative in the Cabinet, and regard must be kept even to minorities and sections within the provinces. Representation in the Dominion Cabinet is accorded to provinces as regions, to the portion of the electorate that resides in a particular area and not to provincial governments as such. Certain sections of the country have established claims to particular departments. For example, ministers for agriculture have been drawn from the Prairie Provinces for many years and the Maritime Provinces generally provide the ministers for fisheries. These factors have the unfortunate result of lowering the quality of the Cabinet, because the Prime Minister is compelled to pass over able parliamentarians. Its further result is that the Canadian national parties do not always manage to maintain a corps of recognised party leaders with long experience in parliament and in office. Again, the national political parties in Canada are not close-knit, so that a member of the Cabinet is not so much a party representative, as he is a representative of the province. He is a constant spokesman of the point of view of his province on matters which come up for discussion before the Cabinet. Appointments to federal jobs in a province are generally made on the recommendation of the minister from that province. Thus, it is the Cabinet in Canada which discharges all those functions which in the United States are performed by the Senate. In the words of Dawson: "The Cabinet has in fact, taken over the allotted role of the Senate as the protector of the rights of the provinces ..... for the province today would relinquish all its Senators without the slightest compunction or regard, if by so doing, it would be allowed to double its representation in the Cabinet." Every minister in the cabinet seeks to promote his province's interest at the centre. He and he alone is approached by his province for this purpose.

Thus seen, the Canadian Cabinet is a conglomeration of conflicting interests. The sense of unity is further created by common membership of a political party which creates friendliness confidence and forbearance. To this bond may be added shared antipathies, similar habits of thought, loyalty to the party leader, the desire to defeat the Opposition and the determination to stay in office. The powers and functions of Cabinet in Canada are more or less similar to those of the British Cabinet. It is responsible for furnishing initiative and leadership to the legislature, conducting the national administration, initiating important laws, formulating policies, and establishing coordination among various departments. The Second World War introduced im[illegible] Be[illegible] of [illegible] mittees. There was no need to establish a Cabinet Secretariat either. Ministers never kept Parliamentary Secretaries. The war, however, changed all that and in 1939 a War Committee

of the Cabinet was set up. In the following years other Cabinet Committees were established. In 1940 a Secretary to the Cabinet was appointed, and he gradually became the nucleus of a Cabinet Secretariat. In 1943 parliamentary assistants to seven ministers were appointed. All these changes have now become permanent elements in the Canadian Cabinet. Wartime Committees were disbanded after 1945 but their place was taken by peacetime committees. The number of parliamentary assistants has increased and the Cabinet Secretariat has constantly expanded.

The Cabinet in Australia inherits directly the traditional place of the Cabinet in Britain. To these has been added the elements derived from certain local circumstances—historical and geographical. The general result has been a very strong executive in Australia. The leader and pivot of the Cabinet is the Prime Minister, although he has no constitutional and only a very rare legal recognition. By comparison with the British Prime Minister, the power of the Australian Prime Minister appears to have been circumscribed by local party practices. Usually the Cabinet consists of the party having a majority in the legislature. There has always been heart-burning and friction between the parties of Town and Country. In the case of a labour Prime Minister the difficulties of formation of Cabinet are more serious. Since 1908 the parliamentary party has selected members of a labour Cabinet by exhaustive ballot leaving to the Prime Minister only the task of allocating portfolios among those selected. In one sense this practice does save the labour Prime Minister from what is often a very invidious task and what has been a contributing cause of schisms. But with all these the position of the Prime Minister remains central, and he has practically all those powers which the British Prime Minister has. Here also the temperament, capacity and experience of the Prime Minister are crucial for the stability and effectiveness of the Cabinet. Voting in the Cabinet is rare and the usual practice is to weigh rather than count opinions in order to determine the sense of the meeting. A conspicuous feature of the Australian Cabinet is that the principle of Cabinet secrecy cannot always be observed. Cabinet differences can be aired in the party caucus; the outlines of the budget are often revealed and discussed in caucus. Some observers interpret this trend in a favourable light and argue that this makes the function of Australian Government more democratic than anywhere else, for, here a democratic government becomes responsible in fact as well as in theory, to that portion of the electors by whom it has been returned to power for every phase of its policy. Just as in Canada there are Parliamentary Secretaries, increasingly their use has also been made in Australia.

Finally, the Cabinet Secretariat functions here as in other countries as a central clearing house of information and intelligence, giving continuity and cohesion to the counsels of State. During war time, the experiment of War Cabinet was also made.

In 1939 an economic Cabinet was set up to supervise production and development during the war.

THE CABINET IN INDIA

In India, the Constitution provides for a Council of Ministers to aid and advise the President in the discharge of his responsibilities. There are four types of Ministers in this country — Ministers of Cabinet, Ministers of State, who are not in the Cabinet, Deputy Ministers, and Parliamentary Secretaries. More important ministers are included in the Cabinet, which is headed by the Prime Minister. The size of the Cabinet in India is about 15, while the size of the ministry as a whole is above 50. Most of the conventions of the Cabinet Government in Britain have found a place in the Constitution of India. In a sense, more or less the entire working of the Indian Cabinet resembles closely with the pattern of the British Cabinet. Generally the Indian Cabinet has consisted of the members of the Congress party, although at different times non-Congressmen have also been included, but they could not last long. The relations of ministers have, on the whole, been harmonious and this may partially be the result of the dominating personality of the Prime Minister himself. All important papers belonging to any department pass through the Prime Minister. The responsibility for the budget remains with the Finance Minister, who discusses his taxa- [illegible]

himself (he is the Chairman of nine Committees out of ten). The work of the Cabinet Committees, therefore, is of real importance and any decision of a Committee bears the seal of approval of the Prime Minister himself. As soon as a decision has been reached in a Committee of the Cabinet, it can be taken to be a final decision and the Cabinet, therefore, escapes the bother of going into it all over again. The Cabinet Secretariat is an elaborate organisation headed by the Prime Minister and consisting of a Secretariat and an attached office, namely the Central Statistical Organization. The Secretariat organisation comprises of the main Secretariat, O & M Division, Military Wing, and the Economic Wing.

We have referred above to the broad harmony in the Indian Cabinet. But it must be stated that sometimes Ministers in India have spoken with two voices. It is customary for Parliament to give leave for the introduction of a Bill whether it originates from a Government or a private [illegible]
witnessed when on August 2 [illegible]
Minister in the Ministry of [illegible]
leave to introduce a Bill for an amedment of the clause relating to preventive detention in the Constitution. The Law Minister, Mr. Biswas, on a request made to him by the Chairman

stated categorically that it was not usual for motions for leave to introduce a Bill to be opposed and indeed advised Mr. Datar merely to give notice of opposition and not press his opposition. Mr. Datar, however, was adamant and the appeals of several Congress members to him to revise his attitude had no effect. Apart from such incidents, it is well known that there are cliques and factions within the Cabinet in India—the wing led by Morarji Desai, and the group led by Krishna Menon, and now led by Lal Bahadur Shastri. The latter follows Nehru more closely.

There have been occasions when Ministers have pressed their resignations because of differences of opinion with the Prime Minister. Resignations due to budget leakage or maladministration have also been given and accepted. Mr. T. T. Krishnamachari resigned as a sequel to Life Insurance Corporation scandal, while Mr. Lal Bahadur Shastri resigned after a bad railway accident in the South. Mr. C. D. Deshmukh resigned in 1956 in more dramatic circumstances. Mr. A. P. Jain resigned in 1960 because of bungling in food policy. The reasons for his resignation were explained by Mr. Deshmukh in a detailed statement in the House of the People. Shortly put, he thought that the decision regarding division of Bombay was unjust, that the question of Bombay was not specifically discussed by the Cabinet, that the decision was the doing of an inner circle of the Cabinet, that it was greatly resented by his constituency of Colaba, that his suggestion of a joint state, which would include Vidarbha, was not explored properly, that there should have been a judicial enquiry into the riots in Bombay and that there was a prejudice in the circles which controlled the Congress, against Maharashtra. Mr. Deshmukh made charges against the Prime Minister, which make interesting reading. Explaining to the Lok Sabha the reasons for his resignation, Mr. Deshmukh said that 'an inner circle' was usurping the powers of the Cabinet and told the house that the decisions on states reorganiation, particularly about Bombay City were not decisions of the Cabinet.... He said that he did not want to share the responsibility for Government's decision to separate Bombay City from Maharashtra. He described the Prime-Minister's statement in June, 1956 about the future of Bombay City being decided by Bombay after five years as 'extraordinary' and said that this was not even a decision of the Government. The decision to make Bombay City a centrally-administered area, was not also a decision of the Cabinet, Mr. Deshmukh stated. He went on to say that the Prime Minister's explanation that he was 'free to announce the Government's decision' was invalid 'as in no sense was this a decision of the Government'. Mr. Deshmukh said : "It is true that a Committee of the Cabinet was constituted to de ide boundary matters, but it was never the intention that the Committee should decide the fate of Maharashtra and Bombay City on behalf of the Cabinet. In any case, I have a grievance in that I was not consulted in regard to the specified decisions announced, although as a Minister specially interested terri-

torially and electorrially at least common courtesy demanded that I should have been. My complaint is that the Prime Minister and the Committee of three have arrogated to the melves powers not delegated to them by the Cabinet as a whole". Mr. Deshmukh said that there was no individual consultation with members of the Cabinet known to be specially interested, as for instance himself, in regard to the decision on Bombay. "There is no record even of a Committee of the Cabinet, and to this day no authoritative text of the so-called decision is available to the members of the Cabinet. This instance is typical of the cavalier and unconstitutional manner in which decisions have been taken and announced on behalf of the Cabinet by certain unauthorised members of the Cabinet including the Prime Minister in matters concerning the reorganization of the states. The separation of Andhra from Tamilnad was decided upon and announced by the Prime Minister without reference to the Cabinet." The Prime Minister refuted these allegations and denied that he had prejudiced, by any statement of his, a full consideration of the Bombay issue by the Joint Select Committee on the States' Reorganisation Bill.'[1]

Attention may be drawn to a number of unusual features in the constitution of Indian Cabinet. In the first place a minister, at the time of his appointment need not necessarily be a member of parliament, nor need he necessarily resign on losing a seat in parliament. But if for a period of six consecutive months he is not a member of either house, he ceases to hold the house. A minister can address both the Houses and the Council irrespective of the chamber to which he has been elected although he can record his vote only in the chamber to which he belongs. Again, in India, the office of the Law Minister is distinct from that of the Attorney-General. In 1962-63 an effort was made by the Union Government to combine these two offices. To this proposal there has been a great opposition from all over the country. If eventually this is done, this can be done only if the Constitution is amended. We have already referred to the relationship between the Council of Ministers and the President In our view the constitutional position of the Indian President is analogous to that of the British Monarch.

The Cabinet meets once in a week or more often as the Prime Minister desires. Usually meetings are held at the residence of the Prime Minister. The office of the Deputy Prime Minister was dropped after the death of Sardar Patel. In the absence of the Prime Minister one of the senior ministers presides over the meetings of the Council of Ministers. In 1962 an effort was made by the supporters of Mr. Morarji Desai to establish the office of a

1 Since this was written, Mr. K. Malviya Minister for Mines and Fuel resigned (June 1963) following a judicial probe in the Serajuddin scandal by Justice S. K. Das of the Supreme Court. Das Report has not been made public.

Deputy Leader of the Congress Parliamentary Party who can automatically preside over the meetings of the Council of Ministers during the absence of the Prime Minister. This created a crisis within the Congress party which was resolved only when the *Prime Minister announced that the post of a Deputy leader would* not necessarily involve Deputy Prime Ministership. At present it is the Home Minister Mr. Lal Bahadur Shastri whom other ministers consult on important matters if the Prime Minister is not *available for consultation. After the Third General Elections,* Mr. T. T. Krishnamchari was brought back to the Union Cabinet and was appointed with the specific charge of establishing co-ordination in economic affairs.

CABINET AND THE PLANNING COMMISSION

An extremely important aspect of policy formulation in India is the role assigned to the Planning Commission which was set up in March, 1950. It is a multi-member body having close elations with the government and headed by the Prime Minister. It includes 3 Cabinet Ministers and the Cabinet Secretary functions as the Secretary to the Commission. The Deputy Chairman of the Commission and the members concerned are invited as and when necessary to attend the metings of the Cabinet and its sub-committees. The constitutional importance of the Planning Commission is that it supplies a democratic approach to national planning inasmuch as it seeks to establish an intimate coordination between the various state plans. It has its liaison with the Central government and with the governments of the states. At the Centre the Prime Minister and three Cabinet ministers and the Cabinet Secretary link the Planning Commission with the Union Government. In addition, there is a good deal of consultation of an informal character between the Central Ministers and the Planning Commission. At the state level contact is maintained between the Planning Commission and the State Governments through the State Planning and Development Departments. The Chief Ministers of all the states are members of the National Development Council, a high level policy coordinating body is presided over by the Prime Minister and meeting at least twice a year. Members of the Planning Commission are also members of the Council of Ministers of the Central Government participating in its work. One of the important duties of the Planning Commission is to elicit public opinion in generally all matters of national planning. Other functions include a constant review over the economic trends in the country, establishing coordination and securing public co-operation with plans, suggesting requirements in the public administration and conducting useful research work of a technical nature. The Planning Commission office has three parts—programme advisers, general secretariat, and technical divisions. Provision has been made for coordination within the Planning Commission's work itself. Just as Planning Commission supplies

a democratic institutional framework to planning which otherwise tends to be more and more centralised, it also supplies a combination between the general administrators and the experts. The ... not only by the adminis- ... also by subject specialists ..., incorrect to say that the ... super-Cabinet. It is equally wrong to suggest that "the position of pre-eminence accorded to the Planning Commission is inconsistent with the conception of a Cabinet form of government."[1] For, everything which the Planning Commission does, the government is ultimately responsible to the Parliament. The question of inconsistency, therefore, does not arise at all.

THE CABINET IN THE UNITED STATES

The President of the United States is his own Prime Minister. The secretaries who head the various departments, are his nominees entirely responsible to him. From time to time the Congress has created departments of the executive, now 9 in number, each of which is headed by a Secretary. These heads of departments constitute what is called as the President's Cabinet. Formally these appointments are subject to the ratification by the Senate but in practice, the Senate has taken the view that no restrictions in his choice must be placed on the President as the responsible executive. A member of the Congress cannot be appointed as a secretary. Usually they belong to the same party to which the President belongs, but they are not men of political distinction and often cabinet posts go to men who have been active in party politics, without becoming distinguished party leaders. In the appointment of these people, the President must keep in view the different shades of opinion within his party, the great geographical sections in the country, the interests of labour, agriculture and capital and considerations of merit. An intimate personal friend of the President is usually taken in the Cabinet. The allocation of portfolios is made by the President himself. The general policy within which the administration of departments is carried on is laid down by the President. Meetings of the Cabinet are held once in a week or more often if necessary and their main purpose is to provide a forum for discussion and settlement of questions affecting two or more departments. The cabinet discussions also afford an opportunity for the President to seek his secretary's assistance and advice on matters of policy. Discussions within the Cabinet are informal and confidential. Secretaries who cannot keep confidences may have to pay the penalty in terms of loss of ... wles was ... differed ... regime ... owles was

[1] Asok Chanda : *Indian Administration*. p. 93.

"kicked up" from his post of Assistant Secretary of State to that of Adviser for Far Eastern Affairs. Minutes of the Cabinet meetings are not kept. The American Cabinet is strictly an advisory body. Weight which will be attached to the opinions of a Secretary will depend upon his personal stature and his judgment. The responsibility for the decision, however, is entirely that of the president. The Secretaries are his subordinates and subject to his command. Their advice can be ignored; decisions can be made by the President affecting their departments without consulting them; advice can be sought from persons who are not in the cabinet; and even when the entire cabinet opposes the President, he may tell them, as Lincoln did: "Naes seven, Ayes one: the Ayes have it". There is no collective responsibility of the cabinet to the President. He is the head of the executive and he alone carries the responsibility of the office. No cabinet can compel him to take account of their views. He can dismiss them whenever he likes, and their term of office is entirely at the pleasure of the President. He calls them into meetings whenever he wishes or consults, them individually on matters relating to their particular spheres of action. Each cabinet member has authority delegated to him by the President to manage his own department.

The growing burden of the office and the weakness of the American Cabinet as an advising and deliberating body have resulted in the establishment of a White House Secretariat. It consists of the personal staff for the President, having several secretaries and six administrative assistants and numerous clerical staff. Their duty is to collect information on the basis of which the President makes policies and to furnish liaison with the Congress and the numerous executive agencies. The White House Secretariat is part of a larger establishment called as the Executive office of the President which is intended to provide expert advice and various contacts. Each of the nine departments is an extremely elaborate organisation today. In addition to them there are about 70 administrative agencies of the federal government such as the civil service Commission, the General Accounting Office, the Inter-State Commerce Commission, the Federal Trade Commission, the Federal Security Agency etc. These boards and commissions have been set up during the last half a century in order to administer and supervise the newer activities of government.

THE CABINET IN FRANCE

We may now turn to consider the position of the French Cabinet according to the Constitution of the Fifth Republic. Following the President of the Republic, the Government take precedence over Parliament. While its role may seem slight beside that of the supreme head of the executive, it has at its disposal powers as vast in principle as they are vague in definition. Witness for example, the import of Article 20: "The Government shall determine and conduct the policy of the nation. It shall have at its disposal the administration and the armed forces......" or, again, under

Article 38, "the Government may, in order to carry out its programme, ask Parliament for authorization to take, through ordinances, during a limited period, measures that are normally within the domain of law." Now it is true that the Government is responsible to the Parliment (Art. 2) but this Parliamentary control is strictly limited and strictly regulated. To make this clear we must quote Article 49 in full: "The Premier, after deliberation by the Council of Ministers shall make the Government responsible before the National Assembly, for its programme, or should the occasion arise for a declaration of general policy. When the National Assembly adopts a motion of censure, the responsibility of the Government shall thereby be questioned. Such a motion is admissible only if it is signed by at least one tenth of the members of the National Assembly. The vote may not take place before 48 hours after the motion has been filed. Only the votes that are favourable to a motion of censure shall be counted, should the motion of censure be rejected, its signatories may not introduce another motion of censure during the same session, except in the case provided for as below. The Premier may, after deliberation by the Council of Ministers, make the Government responsible before the National Assembly for the adoption of a given text. In this case, this text shall be considered as adopted, unless a motion of censure, filed during the 24 hours that follow is carried under the condition provided for in the preceding Chapter. The Premier shall have the right to request the Senate for approval of a declaration of general policy." On the adoption of a motion of censure by the National Assembly, the Government has to resign.

Again, as we noted earlier, the quality of member of Parliament is hermetically sealed off from that of Minister. The functions of a member of the government are incompatible with the exercise of any parliamenary mandate. Now, this distinction will definitely tend to restrict further the influence of Parliament over Government. And, then, the domain of the National Assembly is confined within even narrower limits. Aricle 28 curtails the sessions and the two ordinary sessions, that of autumn and spring, last for a total of about 5 months. But this is the same as under the Third Republic. In Switzerland, a pre-eminently democratic country, the chambers are convened only for two months. But more serious is Article [illegible] main province of the P[illegible] list. It is enough to [illegible] into the hands of the G[illegible] legislative power.

We have referred to the mode of appointment of the Council of Ministers and the Premier. The Council of Ministers appoints the Councillors of State, the Grand Chancellor of the Legion of Honour, Ambassadors and envoys extraordinary, Master Councillors of the Audit Office, prefects, representatives of the Government in the overseas Territories, General officers, rectors of academies (regional divisions of the public educational system) and directors

of Central administrations. An organic law determines the other posts to be filled in meetings of the Council of Ministers, as well as [illegible]

have access to the two houses of the Parliament and they have the right to be heard when they so request. They may call for the assistance of Commissioners of the government (Art. 31). Martial law can be decreed at a meeting of the Council of Ministers but its prorogation beyond 12 days may be authorised only by Parliament. Earlier we have referred to the power of the Government to issue ordinances. These can be enacted in meetings of Ministers after consultation with the Council of State. They come into force upon their publication but become null and void if the bill for their ratification is not submitted to Parliament before the date set by the enabling act. At the expiration of the time-limit just referred, the ordinance may be modified only by the law in those matters which are within the legislative domain. All Government bills are discussed in the Council of Ministers after consultation with the Council of State. The Government has the power to declare a Parliamentary bill or an amendment thereto inadmissible, if it appears in the course of the legislative procedure that either of the two is not within the domain of law.

Again in the financial sphere the Government has the power to enact the budget by ordinance if Parliament has failed to act within a period of 70 days (excluding periods of recess). This provision is rather unprecedented in democratic world. The Government has also the right to ask the Parliament for temporary credits that would be necessary if the annual finance bill did not become law before the beginning of the financial year to which it referred. The members of the Government, however, are made criminally liable for actions performed in the exercise of their office and rated as crimes or misdemeanours at the time they were committed, and for consipracy against the security of the State. In all such cases, the High Court is bound by the definition of crimes and misdemeanours as well as by the determination of penalties as they are established by the criminal laws in force when the acts are committed.

CONCLUSIONS

We may now draw certain conclusions. The Executive branch of government today has come to occupy a frontal position. The principle of leadership is more important here than elsewhere. Theory of Democratic Government is, therefore, called upon to adjust leadership of the Executive with popular restraints on it. The centrepiece of the Executive is thus not a hereditary Monarch or on indirectly elected President—it is Ministry responsible to the Legislature. In Presidential systems this leadership is supplied by the President.

11

THE PERMANENT EXECUTIVE AND THE ADMINISTRATIVE PROCESS

MINISTERS AND CIVIL SERVANTS

If the function of the legislature is to provide guidance for the formulation of policies and that of ministers is to determine these policies, it is the unquestioned and unquestionable business of the Civil Service to carry out that policy with precisely the same goodwill irrespective of whether he agrees with it or not. This is an axiom which has never been disputed in democratic countries. It is, of course, the traditional duties of civil servants, while decisions are being formulated, to make available to their political chiefs all the information and experience at their disposal, and to do this without fear or favour, irrespective of whether the advice thus tendered may accord or not with the ministers' initial views.[1] If the civil servant's unremitting labour would not be available to government, it would only be reduced to a jumble of rules and regulations suspended in mid-air without force or effect upon the people. "I have a shrewd suspicion," Jospeh Chamberlain once said to a group of civil servants, "that you could do without us, but I have an absolute conviction that we could not do without you." A Government may be conducted without Parliament for sometime or even without ministers, but it would be impossible for a society to manage its affairs without a well-organised, efficient and honest civil service. The ministers come and go; they are there as long as they enjoy the confidence of the electorate and the parliament; and they represent the democratic element in the machinery of government. They are party men and their tenure depends on the favourable wind of public opinion. They are amateurs, having the breadth of vision but not the intensity of gaze. They are, that is to say, laymen with no pretence to being anything else. The civil servant, on the contrary, represents the element of stability so essential for the efficient functioning of a government. He belongs to no party and he should have no partisan

1 Sir Warren Fisher, Permanent Secretary to the Treasury and Head of the Home Civil Service, giving evidence before the Royal Commission on the Civil Servants, 1929-31. *Minutes of Evidence*, H. M. S. O. 1931.

spirit. As an intelligent being, he will have his convictions which he, as an inelligent civil servant, will never permit to get the better of his loyalty. He is recruited on the result of competitive examinations conducted by an autonomous Public Service Commission and he holds a permanent tenure with benefit of pensions on retirement. [illegible] work and devotion to duty. A minister may change portfolios rather rapidly, and it is not necessary that a lawyer will always be a Minister of Justice or that a doctor or a physiologist will always be a Minister of Health. The chances are that University Professors will not be Ministers of Education. In fact, an expert minister will be disastrous in the scheme of Parliamentary democracy.

Against this view, Sydney Low argued strongly. "We require", he said, "some acquaintance with the technicalities of their work from the subordinate officials, but none from the responsible chiefs. A youth must pass an examination in arithmetic before he can hold a second-class clerkship in the Treasury, but a Chancellor of the Exchequer may be a middle-aged man of the world, who has forgotten what little he learnt about figures at Eton or Oxford, and is innocently anxious to know the meaning of these little dots, when first confronted with Treasury accounts worked out in decimals. A young officer will be refused his promotion to captain's rank, if he cannot show some acquaintance with tactics and with military

[illegible]

ment but he has to function as part of the whole machine of government. He must look upon the problems of his department as an essential ingredient of the problems of the government as a whole. He must have a sense of proportion which is generally lacking in an expert, who, by habit, seems to regard his own individual field as the most important. A typical expert lives in his own ivory tower and works in his own mental grooves. He is so much in touch with his own departments' problems that he very soon gets out of touch with the general issues and even with public opinion. A minister has constantly to establish a sense of harmony between the administrative department of which he is the head, and the legislature to which he has to be responsible. As a Minister of Education, he must have the interest of teachers at heart, but then, he cannot afford to forget other and larger interests of society; as a miniser o Finance, he must obviously be interested in economy but in his zest for saving, he cannot afford to throttle legitimate public expenditure. These larger interests he will not be able

1 S. Low, Government of England (rev. ed., 1914), 201-202.

to protect if he has grown up in the department and has consequently developed only a departmental point of view. In theory the ideal, therefore, is a combination of the expert and the layman, or better still, the work of the experts should be supervised by lay men. The supervision should, of course, be responsible, tactful and sympathetic, so that chances of friction and conflict may be reduced to minimum and prospects of balance and harmony may be maximised.

This really poses the fundamental problem of relations between the minister and the civil servant. We have already stressed that both are essential for the efficient working of a good government. As in other spheres, here also, much depends on personal equation. An indifferent minister instead of leading, will always follow the advice given to him by the department; a clever, ambitious and well-informed miniser will always be able to assert his point of view … An intelligent and obstinate … ng his facts and figures, and … in the notes on the file and in … will always find innumerable holes through which he will be able to push the policies dear to his heart. The minister at best can give general directions or even instructions to his department; he can plant the flag posts of policies, and in fact as an amateur he can do nothing else. If he is new to the job, he does not know the detailed working of the department which he heads; he has no knowledge of the department's traditions, and he is unaware of the problems which will crop up in the execution of his new plans for which he is so enthusiastic. Within about two months he starts feeling the pulse of the senior staff in the department. Gradually he is seized with a spirit of disillusionment and his enthusiasm for novelty begins to decline. He becomes a realist. The civil servant has done the trick. Without bluntly opposing the new policies of the boss, he has told him countless practical difficulties which the departments will have to face. He has politely warned the minister against rashness. His counsel has been for moderation. With long experience at his back and with practically no experience at the back of the minister the scales are always tilted in favour of the civil servant. For all the informa- …

… legislature on the detailed working of the department. The … ficiencies in the matter. The … superiority. The result is that … etaries will go on pouring out … admonitions. In most of the … follows the line of least resistance and signs his name on the dotted line. No minister will, of course, …

These policies may have been the handiwork primarily of the civil servants but since the minister has to defend them, by a curious gymnastic, they have become his own. If every thing goes right the credit goes to the minister and if something goes wrong, he has to shoulder the blame. He may even have to resign for the failure of his staff. The civil servant is permanent; he is shielded by the doctrine of ministerial responsibility. In theory, the responsibility is that of the minister. There may be a budget leakage for no fault of the minister, but in an instant the budget leakage may terminate his political career. There may be a scandal in the life Insurance Corporation of India and within weeks, the Minister of Finance goes out of the office; a Railway accident may take place somewhere and for the mal-administration in the Railways, the Minister has to resign.

While the civil service is in control of the administrative system and has the monopoly of knowledge of how things work in the intricate civil service machine, and has a greater grasp of the mechanics of government than the politician, it does not mean that the politician has no power. He has lot of it and he can exercise it effectively provided he realises the complicated mechanics of government and also realises that there is no need for him to acquaint himself personally with the exact method of operation of the executive machinery. His power will be effective only if he realises the concrete limits on it. It is his task to indicate the policy and to find out from the civil Service whether it is workable and in this he may expect to receive the honest and practical advice. If it is found to be impracticable, the minister should not resent the fact that he is so advised. The adviser must be candid and his candour will depend on the grace with which his advice, even though unpleasant, is received. If a Minister does not like the advice which runs contrary to his opinions, and gets annoyed with a Civil servant who has rendered such an advice, frankness will come to an end. The civil servant must, of course, know that the minister has the ultimate power and the final responsibility. Knowing as he does the practical aspects of things far better than the minister, the civil servant must be able to offer alternative suggestions, if in his judgment the original idea of the minister would not work. Thus with co-operation and sympathy on both sides, ministers and civil servants can work together as an excellent team, each supplying the other's need. In case of a real conflict over a major issue, it will always be the minister who will win if he is in the right. In theory he might even have disciplinary proceedings started against an obstructive civil servant; in practice of course, this would not happen, for the cabinet and other senior civil servans are there to mediate. If the ministers were wrong, the Prime Minister would most probably shift him to another portfolio or in extreme cases might even drop the minister; if the civil servant were wrong, he can also be shunted out to another department or be even disciplined by Civil Service Procedure. An able and shrewd minister would never precipitate such a conflict

and would never use his vast power to bully a civil servant. The Ministers must realize that being new to their work, they are quite likely to make mistakes. It is for the services to advise them [illegible] these qualities and displays timidity and lack of responsibility, the administrative process can never be dynamic. It is these disturbing aspects of the civil Service in India which have come in for a strong criticism from well-informed observers. [illegible] zation of the services. But largely it is a matter of the intrinsic competence of the Civil Servant.

PROBLEMS OF RECRUITMENT AND TENURE

The strength of the civil servant is not only his vast experience but the general ability on the basis of which he has been selected in the competitive examination. In modern times this system originated from the famous Trevelyan Report of 1853, which recommended the recruitment of the civil service in Britain by competition rather than by patronage and which contemplated "an efficient body of permanent officers duly subordinate to the ministers responsible to the Crown and Parliament, to advise, to assist and to some extent influence those set over them." The purpose in mind of Trevelyan, who has been called as the father of the modern British Civil Service was to attract the cream of the British youth to administration. Since this could be found in the Universities, the entire system of education in Britain came to be coordinated with the scheme of competitive examinations. On May 21, 1855, an Order-in-Council set up the Civil Service Commission whose function is to supervise the recruitment of new entrants to the service by open competition and to conduct the necessary examination for the purpose. The Civil Service Commission consists of a Board of eminent civil servants and their staff who work independently of the executive. The methods of recruitment are a combination of the written test and the interview. This system has been copied in many other countries and its intrinsic virtue being the elimination of favouritism and political pressure, it has become universally popular. A civil servant must obviously function without fear, and to do this his tenure must be secure. The security of tenure can be given only to those wo are impartial and selected on merit. If the basis of appointment is the family or personal relationship with the minister, the conception of security of tenure becomes infructuous. In order to have competition, open and fair, the post must be widely advertised and minimum and preferential qualifications must be sharply defined. The alternative will be nepotism, jobbery, corruption and ultimately downfall of the whole society, for, once the service sinks, the entire government

is bound to go under. "Bad money, according to Gresham's Law, drives out good." Unless the required qualifications are clearly defined, the tendency will be to require no qualifications at all. Hard cases make bad law, and in addition, they are always difficult to explain to the suspicious taxpayer, whose money, after all, is supporting the Civil Service. Qualifications, therefore, once defined as necessary, must be rigidly adhered to. The alternative to public advertisement is private selection or nomination.[1]

With regard to the methods of recruitment, it may, in general be stated that the best course is to put a candidate to written test as well as interview. In a written test the power of expression, the capacity to marshall facts and arguments, general understanding of the subjects of study, the maturity of thought, are all tested. The interview is broadly a test of a candidates' quick decision, boldness in approach and ability to face difficult and unexpected situations in life. The written examination in our view, must be of the academic type rather than the practical. The need for practical examination will partially be made by the interview and if this is considered as inadequate, certain psychological tests may also be prescribed. It should not be compulsory for a candidate to qualify in the interview test. All marks must be totalled and the candidates securing highest marks must be selected. If a qualifying minimum is fixed for the interview, there may be a general feeling in the community that the interview Board has not been fair. The maxim that justice must not only be done, it must appear to have been done, holds good even here. In India for example, [illegible] e a qualifying minimum for the C[illegible] There were quite a few cases wher[illegible] the written examination but fared very badly at the interview and was, therefore, rejected. There were many cases where a candidate spoiled his written test and scored poor, but managed to get 300 marks out of 400 in the interview and got a tremendous advantage over others. We are not suggesting that in such cases the Union Public Service Commission was guilty of partiality or favouritism. But cases of this type are responsible for rumours of all sorts and these rumours undermine public confidence in the integrity of those who are entrusted with the duty of selecting the civil service on the basis of merit and merit alone.

With regard to the written test it may be said that maximum secrecy is observed in the appointment of examiners and setting of the question papers. The examiners will usually be appointed from amongst the university teachers, because they will be men of high intellectual calibre, integrity and circumspection and they would be men with personal experience of handling students in the age groups from which candidates for the examination would be drawn, in common as well as compulsory papers. The syllabus in each subject has to be related

1 Peterdu Sautoy : *The Civil Service*, p. 47.

to the standard of examination, which in turn, depends on the age groups to which the candidates are restricted and the educational qualifications demanded of them. The rules laying down the conditions of eligibility and defining the scheme of the examination and the syllabus in each subject must be published at least six months ahead of the probable date of the commencement of the examination. In each subject, in our opinion, at least three papers must be set and one of these three may be put up in the examination. This will ensure maximum secrecy of the question papers even from the setters. In selecting examiners and moderators for the Central Civil Services, their regional distribution must always be borne in mind. An examiner must not be given more than 300 scripts to examine without excessive strain upon himself. T [illegible] true that this principle [illegible] co-examiners and will, t [illegible] tion of standards. But the device of a Board or conference of examiners meeting for a few days to consider controversial cases, can always be worked out. The duty of the Head Examiner will, of course, be very heavy. The best results of the competitive examination will be possible only if the system of education in the country is adjusted with the needs and requirements of the administration.

TRAINING AND PROMOTION

After recruitment the next stage in the acquisition of ability is the necessary training. In Britain an academic degree is regarded as the mark of mind trained to think in an orderly manner at an early age, and a degree in History is as good as a degree in Economics. In the United States, the upper ranks of the public service tend to be drawn more from the legal profession. In France, the study of law often gives a considerable advantage in appointment to the civil service. The French also have special training schools for new entrants to the civil service. In Britain and in India there is some formal training on appointment. Before 1947 the entrant to the Indian Civil Service used to receive a year's training in England. After 1947, administrative academies and Officers' Training Schools have beem established in India. But in these schools, training is mostly perfunctory. The civil servants are hardly interested in the [illegible] brought to these schools to address the trainees and to impart their experience to them. A useful aspect of training in India, however, is that the young entrants are taken round the country and shown different regions to enable them to acquire a first hand knowledge of the country. They are also trained in practical arts like horse riding, motor driving, shooting and swimming. In Britain, the new entrant

to the administrative class, is assumed by virtue of the qualifications laid down to have a trained and receptive mind. He is attached to a more senior person and left to receive and take up knowledge as best as he can. In India also the Indian Administrative Service Officers are attached to other senior executive and judicial colleagues to acquire practical knowledge of the administrative and judicial problems. Since the best methods of selections would not entirely eliminate wrong appointments, there is usually in every country a probation period during which a candidate is put on trial so that if he is found to be unsuited to the job, his service may be terminated without undue difficulty either for the administration or for the candidate. Once a person has been confirmed, his tenure becomes permanent, although his training continues for as long as he will serve. In Britain, the upper grades of the services are occasionally attached to Universities or some of them are given courses at Staff College designed to give an insight into the broader policy problems. Sabbatical years and fellowship are also provided In India as well as in Britain, civil servants occasionally meet in conferences and seminars, where they can discuss their problems in a spirit of give and take. To these conferences University teachers are also invited so that they may be able to understand the basic problems as well as the requirements of public administration.

An equally important problem of the civil service having a great bearing on considerations of ability, is the question of promotion. Here, the conflict is between the principle of seniority and the consideration of merit. Normally seniority is mechanical, rigid and even inhuman. If it merely means age, it has no instrinsic virtue. Nobody will prefer a senior donkey. If a nincompoop has put in 30 years' of service and has developed grey hair, he has nothing to recommend him. But if seniority connotes long experience in the job itself, it must be taken into account as an important factor. It is obvious that without practical experience of all kinds of situations even the most intelligent and the most brilliant members of the service may not be able to deliver the goods. Seniority, therefore, in this sense, is important. But it must be recognised that at least in the higher cadres of services, the question of promotion cannot be left merely to the principle of seniority. Here, in our view, pure merit is a much more important consideration. If merit is encouraged, the fountains of leadership will continue to be enriched, if it is neglected, the civil service will tend to be stale and its younger members will lose all interest and zest.

LOYALTY AND IMPARTIALITY

Now, what is this merit, which we have tried to emphasise above? In the context of public administration, merit implies not only the ability to see through a problem and to find out the alternative solutions, it also involves a sense of loyalty and

responsibility not only in relation to the service itself but also towards the public. It implies a desire to serve the public and a sense of integrity "which comes from freedom from personal political pressure." It implies a capacity to learn from mistakes. Mistakes in every society are inevitable and particularly a man who thinks for himself and who has a sense of initiative, will always make mistakes. What is important is to draw the necessary lessons from the mistakes you make with a view to correcting your future conduct. Finally, merit in civil servant would also imply that he must be completely nonpolitical and impartial.

What does this impartiality actually involve? It can never mean that a civil servant should have no political ideas or political likes and dislikes. No thinking being can be neutral in this sense. Only a man who is intellectually and mentally dead, will have no political preferences. Indeed in certain measure, political likes and dislikes are inevitable. In modern society [illegible] ild drinks [illegible] ir doors, [illegible] Man's political preferences are governed by the environment in which he is born and in which he has been brought up. The non-political character of the civil servant does not also mean that he should have no right to take part in elections. Like an ordinary citizen [illegible] his job, [illegible] exceptio[illegible] part in politics as long as he remains in the public service. He must keep his private political sympathies to himself, maintaining freedom to serve all ministers of all political shades impartially. It would be impossible for a civil servant, having vociferously championed the losing party in an election and villified the victors to return to his desk to execute policies that he had declared to be execrable. No civil servant can attempt such a gymnastic. He cannot permit himself to be associated publicly with any political party or personally to take part in any public controversy. He cannot afford to participate in any public meeting at which the principal speaker is likely to be an important leader of Opposition. He may, of course, attend such a meeting to listen to what is said but he cannot do anything else. Similarly he cannot identify himself with the ruling party, for, the party that is in opposition today, may be the ruling party tomorrow. If the civil service allows itself to be tied down with any one political group or party, it tends to obstruct the smooth working of the parliamentary process inasmuch as it will do every thing to keep that political party in power by using all the possible weapons in its armoury. It may even tamper with the elections and may prevent the political masters from having a government of their choice. Here, again, permanent tenure and the spirit of detachment of the civil servant becomes important. If a civil servant depends on the ministers both for appointment and promotions, he cannot be impartial or non-partisan. For, fear of being dismissed by

another ministry, the civil servant will naturally be interested in the continuance of the ministry in office which has appointed them and which will give them promotion. This, again, underlines the need for fair rules of promotion so that the mere pleasure of the ministers may not bring to some individuals rapid rewards which may be denied to their more upright colleagues. It follows, then, that the civil servant must have no share in the active political activities. This will not only make them free from political interference and enable them to work on like Tennyson's brook without any regard to what minister comes and what minister goes, it will also add to the efficieney and quality of their work. On the one hand, the Civil Service provides the element of continuity in administration which is a vital element in a parliamentary demo racy. If rapid changes in the government lead to corresponding changes in the personnel of administration, no systematic work is possible and a great factor of permanence is eliminated. On the other hand, the security of tenure, recruitment by competitive examination and neutrality ensure a high degree of efficiency. The ministers are, after all, amateurs. The civil servant is nothing if he is inefficient.

In order that the ends of democracy may be served, it is equally necessary that the Civil Service is not drawn from a narrow section of society, and is not allowed to develop into a caste. A Civil Service which is drawn from a narrow class will never be able to understand the needs of the masses. Nor they have the intellectual honesty so necessary for the implementation of ideas of the kind contained in the Directive Principles of State Policy in the Indian Constitution. A civil servant must have the spirit of service and establish links with the people. So that an understanding may be possible between the government and the governed. Most of the difficulties in a democratic society are due to misunderstandings caused by ignorance and it is but a step from misunderstanding to misrepresentation. In order that the people may have a sympathetic attitude towards the Civil Service and may be able to appreciate the difficulties within which it has to work, it is vital that they be supplied with the necessary knowledge. Criticism then would be constructive and responsible and informed. Criticism in any case will be there. If it is based on proper evidence, it is more valuable. "Democracy", Appleby has said, "hinges first of all on the manner in which responsibility is fixed and held accountable; second on responsiveness and considerateness ..An administrative method that permits letters from citizens to go unanswered, poorly answered, or long delayed is not properly considerate or responsive. An administrative method that sets high barriers before the entrance of citizens into public offices leaves much to be desired. A method that sets any substantial barriers between ranks of public personnel is not a good method. A method that underestimates the value of citizen's criticism merely because the citizen knows only what displeases him and not the difficulties in the

way of pleasing him, is not sufficiently responsive." Of equal importance is the elimination of a spirit of red-tape and departmentalism. In a common background of popular needs all the departments seek to serve one master. Now all this is possible only if the Civil Service is broad-based and has the mental equipment necessary to serve the ends of a welfare state. Its integrity should be above question and it should be free from corruption, for its insidious influence "not only inflicts wrongs which are difficult to redress but it undermines the structure of administration and the confidence of the public in administration".

PUBLIC RELATIONS OF THE CIVIL SERVICE

In democracy, it follows the problem of relationship between the civil servant and the public is exceedingly important. If a civil service has a reputation of aloofness and indifference to public needs and reforms, it will hardly be an effective element of the democratic process. It the civil service is unpopular, there will be no intimacy between the electorate and the administration and both will suffer in the bargain. Yet it is a fact that in countries like Britain, America and India the civil service is by no means popular with the general public. This is due partly to the fact that the public is incapable of appreciating the problems of the civil service and comprehending the complexity of the civil service organisation and partly because the public does not clearly understand why t' [illegible] and why a civil servant t [illegible] civil servant on his part [illegible] tower, tends to remain anonymous and, on the whole, works behind a veil or a wall. The result is all sorts of wild rumours. This, at least is true of India. One often hears of the red tape, corruption, indifference, lack of responsibility, timidity, inefficiency, slow disposal of work and a hundred other things. Now these rumours cannot be dismissed lightly. They may be unfounded, but the fact that they are in currency, has important consequences. It is, therefore, essential that there should be a very intimate and continuous understanding between the public and the administration. The civil servant must always be seized of reality, must be readily accessible to the public in case of need, must try to acquire information from the average citizen, must be an embodiment of courtesy and politeness and must have unbounded patience. He must drive out the cranky who are there in every society—the difficult

[illegible]

discrimination. Even in time of war the best course for the administration will be to take the public in confidence about what is happening on the front, otherwise all sorts of rumours will be afloat and will do lot of damage to the country. Witness, for example, the wild rumours about a General of the Indian Army who, on account of illness, had to be removed from the front on N.E.F.A. to New Delhi.

We are not suggesting that the administration must think aloud about public matters as a few civil servants have been doing in the United States in recent years. But the public, in a democracy, has a right to know the way the official mind is working. In an earlier chapter we have already referred to the Crichel Down Affair of 1954. This case clearly shows that the public so readily believes in the worst rumours about the whole civil service if only a few of its members are at fault. In short a civil servant cannot afford to ignore the human element, he must encourage people to visit him and the visitors must be treated with courtesy. There is a difference between curtness and precision. And even if a request is declined, the reasons must be fully stated. "Nobody likes his requests to be rejected; if they are rejected summarily and without a reason being given, his resentment is likely to be increased". Not only all letters must be replied, but the replies must be prompt and properly worded as if to a friend. It is also important that the civil servants must have cordial relations with the Press which is the vehicle and moulder of public opinion. In the United States and to a certain extent in India, the civil service is using the technique of the Press Conference. A successful District Magistrate or a Superintendent of Police will always try to maintain a live contact with the Press. Wrong news in the Press about the police affects the entire administration adversely, for, nothing influences public imagination so much as the printed word of the newspapers. Even the ministers are powerfully influenced by press reports. This is quite natural for any democratic government. While it is true that confidential information cannot be communicated to the press and restrictions are placed on all the civil servants by Government Servants Conduct Rules, it is important that the correct information to the press is always made available so that rumours may not be published. It is, therefore, essential that the civil servants carefully scrutinize the reports that appear in the press relating to their departments. They should try quickly to spot out incorrect or misleading or exaggerated news published in the newspapers; the correct version should at once be given to the correspondent concerned and a copy should be sent to the admnistrative department of the government. The best course for the civil servant is always to stick to the truth even if it reflects adversely on the administration. There can never be any mutual trust if you are suspected of hiding ugly realities. A civil servant must undress his mind of the notion that press reporters can be won over by lavish entertainments—an insinuation which is resented by any self-respecting journalist. It must be

remembered by a civil servant that to a news reporter, news is his only source of livelihood and he is, therefore, interested in real news which he can publish. A discreet officer must not attempt to make favourites amongst press reporters. All news that can be released should be released to all. It is, of course, true that instead of the best of cares, a great deal of criticism of public administration will remain, for, no administration can eschew altogether possibilities of errors and lapses. The attempt is impossible. You cannot, therefore, expect the press to suppress justified criticsm in this regard. Again, some unjustified criticisms also there will always be, for, in a democracy criticism is a fun and one cannot afford to be unduly sensitive. The best course for the administration is not to stand on false prestige, if the criticism is justified.

QUIS CUSTODIET IPSOS CUSTODES

Internally then, the Civil Service must be characterised by ability and competence; its structure must be broadbased; its relations with the Ministers must be based on the principle of give and take. External relations of the Civil Service involves even more complicated factors for here we have to understand its connections with and its impact on members of the public. The public expects from the Civil Service efficiency, courtesy and equality of treatment—in one word sense of responsibility. The problem here is how to control the controllers—*Quis Custodiet Ipsos Custodes*. Discretionary powers of the Civil Service are vast and they are on the increase. The average man tends to judge the quality of government by the treatment he receives at the hands of the custodians of law and order and supervision of health and education of society. To the administration the legislature delegates legislative powers; the powers of Courts of law to control the administration are diminishing everywhere. Administration enforces the law; it even adjudicates. All this calls for expert and rapid decisions on the part of the administration affecting the lives of millions of people. Planning and nationalization is responsible for a large number of independent regulatory boards, commissions and corporations which are autonomous.

What, then, is the control over the administrative process? Legislative and judicial control are not adequate instruments to keep the administration within democratic bounds. In the public view at any rate, they are not of much avail-the legislative control is too round about, the Courts too remote. This is true of all countries—more true in countries like India where people do not understand law and law procedures and where lawyers are more interested in money than in justice: Here the value of organized Interests or Pressure Groups becomes quite evident. Let there be "direct connections between the branches of administration enforcing particular laws and the various sections of the public interested in those laws." Some interests will want more vigorous action in relation to some activity, while others will want less.

The pressure and counter-pressures will enable the administration to take an action that will suit all interests, and that will be accepted by all interests. Every interest will, then, cooperate in making that action effective. This done, democratic government will shed most of its coercive aspects and society will then become a great cooperative Commonwealth. If the Panchayats in India can serve this purpose, a tremendous step forward would have been taken. The use of advisory Committees intended to ensure consultation with the interests affected by a proposed administrative action has been described as Democracy's answer to the challenge of corporate state. Let not the functions of government be turned over to corporations directly representing interests. If this is done, Democracy may be the first casualty. The advisory Committees, on the one hand, give representation to the pressure groups, and, on the other, ensure democratic process. These Committees will provide expert knowledge, as well as advance warning of public reaction to a proposed action. In India, we may begin the experiment by enlisting the corporation of Panchayats and Zilla Parishads to achieve what advisory committees have achieved as instruments of the administrative process in Britain, the United States and Canada.

METHODS AND TECHNIQUES OF CIVIL SERVICE

But the whole thing will depend upon the methods used in the working of the Civil Service. The filing methods must be such that the application which is first received, must be disposed of first. In India this is rarely done. References must be quickly found out. Different departments must be able to exchange information quickly. The journey of file from one desk to another must be rapid—as rapid as democratic procedures permit. A civil servant must not avoid responsibility of taking decisions, for, nothing demoralizes the subordinate staff so much as the impression that the boss is cowardly and is afraid of taking a stand. Here, again, our civil services are found wanting.[1] Notings on the files must be precise and categorical. Agencies of consultation must be devised and utilised. Maximum care in handling public money and public property has to be exercised, for, a single error by the civil servant may shake public confidence in the government. Occasional inspections by senior officers in a department are simply imperative. Rules and regulations should not be allowed to impinge on technicalities. It must be remembered that all laws are for men and what is called as legalistic approach must as far as permissible, be avoided. Records must be carefully preserved, for they are not only source of information which may be relevant in future cases, but they are places for discovering precedence. But it must be remembered that a civil servant should not make fetish of precedents as is often done in India. Precedents have their value and we have examined it in the Chapter on Judiciary. But each

1 This, notwithstanding the A I R—VOA Deal of July, 1963.

case must be treated on merit. Precedents must not become a rigid jacket which robs of freedom of action. Record keeping is also useful for newcomers. Even memoranda of an oral conversation with the senior officers must be preserved and all important events and decisions must be put in black and white on the appropriate file. During the British days in India the senior officers in the District kept diaries which helped them to compile the Imperial Gazeteer—a priceless reference work. In our view this practice must be revived. As far as possible, the frightening phraseology, which a civil servant is so fond of using, must be avoided in dealing with the public. These days books on public administration are written in such a technical language that for a normal educated individual it becomes rather difficult to follow much of them. This is a very alarming development. This special love of technical word, is, in our view, a positively anti-democratic trend. Form may be important but if you are involved merely in style, leaving out the thought content, you will follow the tragic case of a man, who forgets to reach the destination and makes a hotel a permanent residence. Forms for their own sake are a burdensome incumbrance.

POSITIVE CHARACTER OF CIVIL SERVICE

In backward countries it is essential that the general character of the civil servant must ensure that he becomes an essential instrument of a welfare state, which is the accepted ideal in these communities. In India, for example, after independence the civil service is called upon to undertake development schemes of various kinds, embark on programmes of industrialization and implement planning at all levels. The civil service is no longer confined to collection of revenue and administration of justice and maintenance of law and order. Nor can a civil servant today afford to live on what K.M. Panikkar calls the tradition of bureaucratic inde- [illegible] then created as instruments for carrying out the policies of parliament, the evolution in countries like India, has been the reverse of this. When power was transferred to us, the civil service was already well established "with a non-democratic approach of paternalism, described properly in Indian slang as Ma Bapism or of being father and mother." Thus, democratic institutions in India have been superimposed on these political and administrative foundations. This, on the one hand, underlines the importance of relations between the civil service and the ministers, and, on the other, between the civil service and the people.

In this context the qualities needed in the civil service are not merely the qualities of judgment, honesty, and general competence,

but also courtesy, understanding, and human approach, to which we referred earlier. On the one hand, the civil service, today, is called upon to maintain law and order, and, on the other, it has to operate a democratic system. And, since democracy, today, not only means political rights, but also economic advancement and social welfare, an ideal civil service must show awareness of these problems and display a knowledge of industrial and economic institutions. Modern state makes a very heavy call on the time, attention and merits of a civil servant. The Parliament, in a democracy, has the right to elicit information and to control the actions of the ministry in the administrative field. The minister has a responsibility to Parliament for the actions of his subordinates. There has, therefore, to be a demarcation of authority between the minister and the permanent civil servant. But this is not an easy task. In actual practice, no such demarcation is possible.

We may, thus, conclude that the entire relationship between the civil servant and the ministers and between the civil servant and the people will have to rest on the basis of practical working arrangement and not on any constitutional principles. The functions of the civil service were always considerable. They are becoming more and more important in recent years. Bagehot

expectations of the People with regard to state activity. The civil servant not only has a pre-natal and a post-natal control over policies, he helps the ministers in discharging their duties in the Parliament. He provides the skeleton, within which policies are formulated; he is responsible for preparing answers to questions which are put in the Parliament; he is responsible for the execution of the laws; he sometimes, even legislates by issuing orders and regulations. That is why civil servants are often called the states-

CORRUPTION IN THE CIVIL SERVICE

We have referred above to the minimum requirement of a civil servant—efficiency which is really an objective of all control measures. The concept of efficiency involves three principal values: the first is economy in financial terms or more fundamentally in the use of men and materials; the second is effectiveness, *i.e.*, the performance of functions as entrusted, accurately, expeditiously and in full measure; and the third has to do with coordination, the integration of the several parts and objectives in such a fashion

that there is no incompatibility. If these basic values are to be realised, it is quite obvious that corruption must be eliminated or at least reduced to minimum, for, corruption involves not only injustice which needs no explanation, but also inefficiency. And in countries where the general standard of technology is low, as in India, this is a very serious matter. Railway accidents may be caused by Station Masters corruptly agreeing to load logs that are too heavy for the wagons. Patients in hospitals may be denied admissions or treatment they require or bribe nurses to give them treatment they want but which may be unsuitable for

still rare, corruption results in the appointment of unsuitable people and, therefore, the waste and frustration of the right man. Corruption also leads to mistrust of the government by the citizen, in which case, the people will have little enthusiasm for programmes of economic development. If people know that the taxes they are called upon to pay are passing in private pockets either of the contractors or the engineers or other officials, there will be a general reluctance to pay these taxes. Waste of public resources is another result, for, corruption in government involves the ultimate transfer of public funds to the pockets of politicians or officials. Every businessman who
bribe to get the government contrac
to public funds. This is almost an
corruption may also result in the discouragement of enterprise, specially foreign enterprise. "Corruption adds an incalculable hazard, to the normal thickets of bureacuratic procedure". In fact the final bribe is never paid, perhaps can never be paid and the investors are frustrated and may ultimately discover that the unofficial cost of launching an enterprise is not great for it to be profitable. Again, in a country where there is a great deal of corruption, political attacks on people in position of power are easy to mount and easy to get popular support for. India is a case in example. Those who are not in the government are probably no *less corrupt* but because *they are out, they always accuse* those who are in. Popular indignation at the prevailing corruption leads to the replacement of the 'Ins' by the 'Outs' who, in their

instability and lack of economic development.

Now, it is dfficult to single out a society where there is absolutely no corruption in government or in public services. Some countries suffer from a greater degree of corruption than others. It is

only very recently, and in only a handful of countries such as Sweden and Britain where corruption has been reduced so much as to be practically negligible, *i.e.*, so far reduced that it does not normally enter into a citizen's relations with his government. While it is difficult to be fanatic about what corruption means, the general meaning of the term is clear. A public official may be said to be corrupt "if he accepts money or money's worth for doing something that he is under a duty to do anyway, that he is under a duty not to do, or to exercise a legitimate discretion for improper reasons." The ideal relations between the individual and the government is that the former should be able to satisfy his personal aims in harmony with, and while forwarding, the official aims of the government. Where there is a conflict between the personal aims of the individual and the official aims of the government there corruption becomes inevitable For example it matters little if a compounder in a hospital has eight children to feed; and he is acting quite legitimately in working as a compounder, so that he can feed his eight children with his salary. But, should he find his salary inadequate and take money from the patients for doing them favours, he will be described as corrupt, because he is using his position in the hospital to forward his personal aims in a way which conflicts with the official aims of the hospitals. Thus, all corruptions become illegal. But it must be remembered that people violate laws because they do not accept them or because they have other interests or desires which they prefer to follow. The greater is the divergence and the gap between the aims and methods of the government of a country and those of the society in which the government operates, the higher would be the level of corruption. The reason is that the particular aims and procedures of the government would place particular groups of the population at a special disadvantage. And those who are put at this disadvantage will try to reduce them by greasing the palm of those who are in authority.

Another possible explanation of corruption may be the availability of the goods and opportunities on which money can be spent for these opportunities and goods would tend to make money [illegible]

is itself looked on with disfavour. If this argument is accepted, [illegible]

[illegible] example, in Communist China, the government claims that it has greatly reduced corruption. If it has done so, it has done it by making goods and opportunities unavailable. But the principle we have just enunciated may not be of universal application. For example, the Soviet society in 1953 was corrupt. There [illegible] of blackmarketing and endless rackets. The key word in [illegible] days was Blat, which stood for a peculiarly Russian mixture

"Spivery" and graft. Edward Crankshaw writes that for years it was impossible without the necessary Blat to get a railway ticket from Kiev to Kharkov, to find accommodation in Moscow or Leningrad, to purchase a new valve for a wireles set, to find a man to mend a hole in the roof, to obtain an interview with a Government official.[1] There was lot of straight bribery—bribery more often in kind or special services rendered than cash. It was used for extracting favours from government officials, for getting permission to live in one of the big cities, for wangling idle or ungifted children into Moscow University, for evading posting to remote and inclement areas. Those who gave such favours also received them. It also meant that "you are well in with the store man of a nearby collective who will let you have two hundred weight of potatoes earmarked for delivery to the state in return for a word in the ear of some state or party officials, and with these potatoes you can feed yourself and buy all manner of badly needed things. It may also mean that you can get a doctor to sign a certificate saying that you need a month's free holiday in the Crimea. Now, what do you do in return? Not necessarily anything: the doctor simply feels that you are a useful person to be friendly with, because you have a cousin in good standing in the Moscow Soviet. This sort of thing happens everywhere including India and in fact this may be the only way to get what is needed. This may, however, lead to speculation. Goods may be in short supply and speculators use every conceivable device to intercept whatever goods are available and then to redistribute them at a profit. Factory employees may be bribed and phoney waiting lists may be compiled. The choice may be between standing for eight hours in a long queue or to buy things quickly from a speculator. And these speculators may offer infinitely quicker and better service than the official state shops. It Stalin's days the Minister for Steel Production controlled a huge enterprise and was responsible for fulfilling his ministry's plan and comr
tons of steel each year.
danger. He would, there
regardless of what happened to other ministries. And since every other minister would do likewise, there had to be some body who could arrange inter-ministry or inter-factory barter deals, cutting out the red tape and making hay of the central planner's calculations. This middleman was called as the fixer: "Tolkach". Not that the State Planning Commission did not know this. They knew that without these informal arrangements production would have been stopped. Thus in the case of the Soviet Union, the goods and opportunities were there, but the demand for goods and services greatly exceeded the supply and the result was corruption.

In India, the widespread corruption in practically all ranks of the civil service can be explained in terms of scarcity of goods and customary services, exchanges of gifts as an important element in

1 *Khrushchev's Russia*, p. 71.

the traditional life and the facility with which a bribe may be disguised as just a marriage or birth-day present. In practically all the offices the most effective way of getting things done is to tip the peon and grease the palm of the clerical staff or at a higher level to make respectable presents to the officers. Sometimes, the joint family system or unplanned families may lead to the over-burdening of an official with family responsibilities so that his pay becomes insufficient while social customs compel him to live beyond his means. In this country there is a general willingness on the part of an average man to pay bribe and the corresponding willingness on the part of the average officer to receive it. If an officer does not take it, he becomes an exception and as an exceptional figure, sometimes he may have to receive a kick in the middle of his head. The logic is simple. If you do not accept bribe, you will always be hard-pressed for money and will not be able to please your bosses. Even promotions from the lower ranks to the higher rank may, in the ultimate analysis, depend on the pleasure of the senior officers, who can be bought. Quite obviously a man may be bribed with a horse, a woman, a gun, or a necklace for his wife as effectively as with a roll of notes.[1]

There may be no hard and fast rule as to whether the lower staff will be more corrupt or the higher staff. It is not necessary for a poor man to be dishonest as it is not necessary for the rich to be clean. It may, in general, be stated that in a society where majority of the population is illiterate but where the government is literate, friction between the two will always be the greatest at the base of the public service pyramid. It is at this level that contacts between government officials and the average man will be most frequent and it is, therefore, at this level that the greatest volume of corruption would occur. The amount involved at the [illegible]

He will, therefore, not fall easily in the trap laid by the clever government officer. But where the average man is illiterate but richer than a constable, the constable will always try to compensate [illegible] a, he will easily [illegible] to supplement [illegible] a little share in [illegible] bribe in order to have a little share in the farmer's wealth. This exchange of wealth for power and power for wealth is the typical pattern of corruption in India. It is really remarkable that an observer of the calibre of Paul H. Appleby miserably failed to appreciate or even to understand the state of affairs in this country. It is no sign

[1] A district Engineer in U. P. told this author that the A.G. Office in U. P. delays the pay slips so that monthly pay is sometimes not paid for 2-3 months. This circumstance compels the officers to receive illegal gratifications.

of patriotism to hide or conceal the existing corruption and to proclaim from the house-top that we are a clean society.

Finally, we may refer to another source of corruption in India. Here, we have a number of laws which, in the nature of things, must be broken. Laws regulating gambling and drinking, for example, usually have little general support from the population. They are difficult to enforce and will frequently be broken by otherwise law-abiding citizens. Witness the tragedy of prohibition in India. It not only deprives the state of a fair amount of revenue, but it also makes a drunkard a martyr. Laws of this kind tend to bring all law in disrepute. Petty officers are responsible for administering such laws. The result is the creation of a large class of persons vulnerable to legal action at the hands of these petty officers, who always encourage corruption. Then, there may be a law which seeks to prohibit dowry, such as the one enacted by the Indian Parliament in 1962. Either such a law will never be enforced, or it will lead to large scale corruption. Similarly, laws dealing with rationing and control, which may be dictated by pressing circumstances, are a breeding ground of corruption. Without adequate means to enforce such regulations and without any understanding by the population of why such regulation was desirable, laws of this sort serve to corrupt the officers charged with their enforcement. The recent gold regulation promulgated by the Finance Ministry of India, will, in our opinion, be a fertile source of corruption. Again, the state may go on enhancing the rates of taxes without taking steps to ensure an efficient realization machinery. High taxation may, therefore, convert many formally honest people into the semi-criminal ranks of tax-evaders. Tax-evasion may be connived at by dishonest income-tax officers. Similarly direct control of rare resources may have the same effect. We are not arguing that a society can be transferred without laws or that laws for the betterment of society should not be made. Not only government is necessary but too much of government is becoming necessary these days. The result is conflicts, which give rise to corruption. What we are arguing is that a wise government, while making laws, must make sure of the machinery that will be responsible for enforcing it. Nothing demoralises a society, so much as too many laws which remain only on paper and which, in the nature of things, cannot be enforced. This demoralization prepares the climate for corruptions, which will affect ministers, senior civil servants, police men, engineers, doctors and the rest. In such a climate there is a wide-spread rumour-mongering. Fantastic stories are handed down from person to person. Some of them may be entirely untrue, but they are accepted without comment and without indignation, with a spirit of resignation.

Another step, which a wise government must take is to make examples of the corrupt officials and corrupt ministers. During the British period, giving and accepting gifts might have tended to

soften conflict and reduce friction between the white rulers and the black ruled by generating a personal familiarity. But, today there can be no justification for this trade. Public campaigns against corruption may be of tremendous value. But this can be launched only if the government recognises that corruption exists. A few years ago a public controversy raged in India between the ex-Finance Minister Mr. C. D. Deshmukh and Prime Minister Nehru. The former publicly announced that he knew that corruption existed at the highest level in India and that even some Union Ministers were involved in it. He asked the Prime Minister to appoint a high level Tribunal to which he would be able to confide secret details about the corrupt. officials and ministers. The Prime Minister promptly denied that large scale corruption existed in the administration. He called upon Mr. Deshmukh to let him know the names of those persons who, he thought, were corrupt, so that the government could proceed against them. The whole controversy left a bitter taste in public memory and no good came out of it. While we recognise that there has to be more and more activities of the government today and that there will have to be more and more laws, we must emphasise that these increasing activities and laws also enhance the chances of corruption and black-mail. Public opinion against this must be extremely active. Even if a corrupt minister has a politically useful following in the country, he must be thoroughly and even dramatically exposed, Exemplary proceedings against him would give publicity to government's determination. There must also be steady and continuous educational efforts in schools and colleges and in the newspapers. The campaign against corruption must not be short and intermittent. It must be continuous and should become a normal part of the administrative process.

It must also be stated that service conditions and salaries of the civil servants must be good and the status of the service high. There must be a continuous scrutiny of the existing and the proposed laws so that such ones may be eliminated as tend to increase the opportunities for corruption unnecessarily. But all this is possible only if our policy framers realise that corruption exists in all societies, that it has causes that can be understood and that there exist methods which may minimize corruption and which may strengthen those factors working against it. Even in a society like the United States of America, corruption exists at the highest level. Repeated congressional investigations have revealed how corruption has become a part of federal, state and local government in the United States. The focus of political influence—the Tammany Hall—is notorious and its political power was graft. Honest graft was accepted openly and it included such items as contributions from interested citizens for candidates for public off [illegible]
for [illegible]
dis[illegible]
as the incomes from the controlled or protected prostitution and

narcotic rings. The whole catalogue of corruption in the United States would be found in the famous work "Power and Morality" by Sorokin and Lunden. Similarly, in the operations of foreign aid, the American official has probably set the limits of corruption. In two recent publications "Foreign Aid" by Thomas S. Loeber and "The Famous Ugly American" full details of this corruption have been brought out. The law of bureaucracy everywhere never admits that there is anything wrong, because, to acknowledge the existence of a wrong is to take responsbility for its correction. The bulk of money sanctioned by the American Government for foreign assistance passes in the pockets of the American officials who are responsible for operating the aid. Full advantage of this corruption is taken by the officials of the host countries. Money that is embezzled, is shown as over-spent; typewriters that are sold in the black-market are indicated as lost.

The best and the most durable remedy against corruption is to admit its existence, to give it publicity and to take remedial measures some of which we have indicated above.

ORGANISATION AND STRUCTURE OF CIVIL SERVICES IN DIFFERENT COUNTRIES—BRITAIN

So far we have been examining the basic principles of the Civil Service. A word may now be said with regard to the structure of civil services as we find them in different countries in the world. The civil service in Britain is a heterogenous collection of persons drawn from all rakns of life engaged in all manner of occupations and possessing only this in common—that all are paid out of monies provided by Parliament. The number of civil servants under this definition amounts to more than a million; for it includes some 418,300 Government industrial employees in such establishments as Royal Ordnance factories and Admiralty dockyards. The term 'Civil Service' is, however, generally used only to cover 'non-industrial' members of the staffs of the various Government Departments in the United Kingdom or working overseas either in the Foreign Service or for other Government Departments such as the Commonwealth Relations Office. On 1st January, 1957, the total numder of non-industrial civil servants employed in all Departments, at home and overseas, was 637·423; nearly one-third of this total are women.

Although the civil servant is legally a servant of the Crown, in practice he serves the Minister in charge of the Department in which he works, by advising in the formulation of policy and by carrying out policy decisions once they have been taken. From time to time the Minister may change but the civil servant remains to serve his successor. In Britain changes of government do not involve changes in departmental staff; this continuity makes for administrative stability.

The engagement and position of all civil servants are covered by regulations, agreement and traditional practice—every civil servant being assured of a definite status depending upon the post which he is called upon to fill. There are four main classes of civil servants, each class containing a series of grades. The classes are: (1) The Administrative Class, which is responsible for advising Ministers on policy, for dealing with any difficulties which may arise in carrying out existing policy, and for forecasting the probable effects of new measures and regulations. This relatively small class, which on 1st January, 1957, numbered 2,628, is recruited largely from university graduates. (2) The Executive Class (numbering some 67,900 at 1st January, 1957), is responsible for the day-to-day conduct of Government business' including the higher work of supply and accounts, within the frame-work of established policy. Members of this class must have reached a recognised educational standard; after entry they may train for specialist work such as that of auditor, actuary or statistician. (3) The Clerical Class the largest of the main classes, (comprising about 183,700 officers including clerical assistants), undertakes all the usual clerical work involved in running departmental business, *e.g.*, the preparation of accounts and the keeping of records, the handling of particular claims in accordance with known rules, and the summarizing and annotation of documents for the assistance of senior officers (4) The Typing Class (about 27,700 members), consists of shorthand typists, copy typists and learner typists.

Among other classes are: the Professional, Scientific and Technical
with the r
and reseai
alized dut
Ancillary
operators, prison officers, forest workers and others, and numbers some 41,100; the Messengerial class which in addition to messengers, includes paper keepers, office cleaners and similar workers (in all some 36,700); and the Minor and Manipulative Class (with some 200,000 members) which consists entirely of post office workers, *e.g.*, postmen, postal and telegraph officers, telephonists and telegraphists, and their immediate supervisors.

The Foreign Service which in 1956 numbered some 3,300 members exclusive of messengerial grades, has its own nomenclature. Branch A corresponds roughly to the Administrative or the Home Civil Service; Branch B to the Executive class and Clerical Classes; and Branch C to the Typing Class. All members of these three branches are liable for service both at home in the Foreign Office and abroad, and may be employed on any type of Foreign Service work—diplomatic, consular, commercial, and 'information'. The recruitment of all permanent civil servants is in the hands of the Civil Service Commission which, in the selection of entrants, is independent of both ministerial and par-

liamentary control; its members are appointed by the Crown on the advice of the Government. The normal method of entry is by open competition, conducted in accordance with regulations approved by the Treasury and consisting of written examinations or interviews, or both. The main points of entry into the four main classes of the Home Civil Service are planned to correspond to definite levels in the British educational system, and it is the Commission's duty to study the requirements of the Civil Service in the light of the education provided by the schools and universities. In addition to holding examinations and conducting interviews, the Commission is responsible for issuing a certificate of Qualification in respect of each successful candidate, for placing new entrants in Departments for which their qualifications are appropriate, and for watching the careers of those it has selected in order to ensure that current methods of recruitment are successful and up-to-date. Temporary civil servants, who do not qualify for pensions, but are eligible for gratuities, are normally recruited by the Department concerned. Each of the larger Government Departments has a Training Officer and a number of instructors, who organize both general and technical courses where necessary. Types of courses vary from Department to Department, but nearly all have systematic instruction of recruits in all classes. There are also 'refresher' courses for more experienced staff covering technical subjects or broader subjects such as management and supervision. Methods of training include discussions groups, instructional films and educational visits to enable civil servants to study the working of appropriate outside bodies. Civil Service Training is co-ordinated by the Training and Educational Division of the Treasury, which runs central courses for members of the administrative, professional and scientific classes at different stages of their careers. A period of probation (lasting from one to two years according to grade, with extension in certain instances), is the rule for all new entrants to the permanent Civil Service. Promotions fi [illegible] Departments; those from clas [illegible] conducted competitions (open [illegible] civil service classes), and partly by Departments themselves. All promotions to the Administrative Class from other classes require Treasury approval. Promotions to most of the highest positions in the Civil Service, *i.e.*, Permanent Secretary, Deputy Secretary, Principal Establishment Officer, and Principal Finance Officer, must be approved by the Prime Minister, who is advised in these matters by the Joint Permanent Secretary to the Treasury who is the official head of the Home Civil Service.

Machinery for negotiation on conditions of service affecting the civil Service as a whole is provided by the National Whitley Council. A Committee, under the chairmanship of the Deputy-Speaker the Rt. Hon. J. H. Whitley, which had been appointed by the Minister of Reconstruction, reported during 1917 and 1918 in favour of the introduction into industry of a system of joint

councils on which representatives of the workers should share with the management the division of questions particularly concerning the workers' interests. The new plan, however, commended itself very favourably to the rank and file of the Civil Service. The staff associations, growing in strength by the inflow of new members, put pressure upon the Government to apply the Whitley scheme throughout the central departments and persisted in their representations with such good effect that the understandable reluctance of the Government was overcome. The departments and associations discussed jointly the application of the scheme to the Civil Service and produced, in May 1919, an agreed report. This was a consummation that in itself demonstrated at the very outset the potentialities of the Service as a field for operating the Whitely method of joint consultation. The report recommended the establishment at an early date of a National Whitley Council and appropriate departmental Whitley councils for the non-industrial classes of the Civil Service.

Employment organization in the Civil Service is today divided into three distinct but closely inter-related sectors; namely, the National Whitley Council, the departmental Whitley councils, and the staff associations. Broadly their respective fields of responsibility may be defined as follows: the National Council deals with matters of interest to grades in more than one department, the departmental council deals with the affairs common to the various grades within its own department, while the association pursues the interests of the grade or grades, which it has been formed to represent, whether its members serve in one or a number of departments. The National Whitley Council has a membership of fifty-four; one-half of whom, appointed by the Government, is known as the 'Official Side', the other half, appointed by groups of associations, being known as the 'Staff Side''. Membership is not confined to civil servants. Normally the Official Side which is appointed by the Chancellor of the Exchequer, consists of higher civil servants, while those selected to represent the Staff are usually important association officials, who may or may not be civil servants.

In general, the civil servant receives a salary which is intended to compare reasonably with that paid for similar work outside the Service, and he normally receives annual increments up to the maximum of the scale of the grade to which he belongs. Civil servants are generally 'conditioned' to a given number of hours of attendance a week. Overtime is paid to members of most of the lower salary groups if they work longer than their 'conditioned' hours.

Civil servants may participate in political activites subject to certain special rules. Many grades are completely free to engage in national and local political activities; others are free to engage in most political activities by permission and subject to certain conditions; while others, again, are not allowed to take

part in national political activities, but are free to seek permission to engage in local political acitivities. Civil servants of every grade may, of course, exercise the right of all citizens to register their private political opinions on appropriate occasions, *e.g.*, at a general election or at local authority elections. Officially, the position and functions of a civil servant remain the same whichever political party is in power; and it is his duty to serve the Government of the day irrespective of his own political opinion.

Normally, the Government is not concerned with the private political views of its servants. There are, however, duties where secrecy is so vitally important to State security that the State is not justified in employing any one to carry them out whose reliability is in doubt, and therefore, no one who is known to be a member or, is actively associated witn, the Communist Party or with Fascist organization is employed in connection with such work. In general, however, every civil servant may engage in such private activities as he wishes provided that such activities do not in any way conflict with his official duties, nor with the provisions of the Official Secrets Acts of 1911 and 1920 and the Prevention of Corruption Act of 1906. A civil servant must not, however, use his official position to further his private interests; and he is, therefore, subject to restrictions in matters of commerce and business from which the ordinary citizen is free, *e.g.*, he may not hold private interests in public contracts; and he may not use official information in writing, broadcasting or lecturing without the express approval of his Department. Above all, a civil servant is expected to conform to the high standards of integrity which characterize the Service to which he belongs.

THE CIVIL SERVICE IN THE UNITED STATES

[illegible] ised to [illegible] as the [illegible] reward [illegible] anged. The Civil Service Act of 1883 as amended, later on provided in general for appointment through competitive examination, permanent tenure and promotion on merit. At first this Act applied to 13,924 out of the 1,31,000 employees then in federal service, but under its terms, Presidents and occasionally Congress have gradually extended its coverage until now it includes all position, whatever the function or designation and whether compensated by fixed salary or otherwise, unless specifically accepted by the Congress or the President. General positions now outside the classified service are confidential or policy making positions, Treasury employments, or in a few designated independent agencies. Under the terms of the Civil Service Act, recommendation from Congressmen with respect o civil service appointments can be given weight only so far as they concerned the character and responsibility of the applicant. Civil Service

Rules in the United States forbid discrimination for political or religious reasons. With the introduction of the permanent tenure the quality of the American Civil Service has improved. While persons of ability formerly hesitated to accept government positions, which they would hold only for a short time, now they are attracted by the security the state employment provides. It must, of course, be stated that in the United States, commerce and business offers more attractive conditions than government job. The American Civil Service Commission is responsible to conduct the examinations to test the fitness of applicants for positions in the competitive service, to establish qualification standard as the basis for reinstatement, promotion, and transfer of federal employees. It also administers the Veteran's Preference Act of 1944, which provides for the grading of preference to certain classes of persons because of military service and conducts investigations of persons entering [illegible]

It maintains service records of employees in the executive civil service and administers statutory provisions and Civil Service Regulations restricting the political activity by federal employees and by certain state and local employees participating in federally financed activities. It also administers the Civil Service Retirement Act.

The size of the civil service has been increasing in the United States as in other countries. A large number of bureaus and independent commissions have been springing up. This arose along with the growth of government regulation. Commissioners are appointed by the President with the approval of the Senate for a stated number of years. As in England, so in the United States, there has grown up the Government Corporation Secretariat to undertake some specific projects or to conduct some business undertaking. The Tennessee Valley Authority is the best known of these corporations. Each corporation or commission has a political head responsible for his department or agency to the President. He is assisted by staff services and other officers. There are a large number of inter-agencies Committees (more than 500), to establish co-ordination between them. These administrative agencies are also subject to lobbying and pressure groups.

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offices in America are filled by election. And instead of the civil service selecting new recruits from amongst the best qualified, acting as it were on behalf of the public, the public is given a chance directly to elect, say, the Chief of Police or a Revenue Collector. Again, in the United States, politics are no barrier to civil service office. The accepted American theory is that the most faithful

public servant is one who is a political adherent of the party in power. Increasingly it has been realised even there that there are certain posts and grades in which continuity is desirable and thus what is called as the civil service system, has gradually developed in the United States. Increasingly also the federal service tends to be more secure and less liable to political influence. In the American society there is general distrust of the civil service as is quite evident from the congressional investigations. Here there is no such tight system of ministerial responsibility and anonymity of the civil service as in Britain. Whatever the civil servant does is open to everybody to see. In more recent years, government service as a career has grown in prestige. Salaries and other conditions of service are not quite unattractive and, in fact, clerical salaries are above the average in private employment. Professional salaries are better than the pay scales of University Professors. Increments and promotions are standardized. Promotions from one agency to another frequently take place. Removals are difficult. Corruption, of course, is rampant as we have already noted. Most of the administrative agencies do useful research work. The American Bureaucracy on the whole, was a very powerful force in the American Political system. The control over it is exercised by the President and by the Congressional Committees. The Congress is extremely successful in keeping the administration sensitive to public opinion. But the biggest problem of the American civil service remains unsolved to this day—the problem of unco-ordination. There are a few instruments of a coordination like the presidency, the Bureau of the Budget, the Council of Economic [illegible] Committees, the Appropriati[illegible]d other Congressional Comr[illegible]istrative agency is very powerful and usually resists integration. They have also powerful advocates in the Congress.

The problem of loyalty of the civil servants has been responsible for a large-scale scandal in the United States of America. The ideological struggle between the American way of life and Communism has been responsible for this sorry state of affairs. Anybody who is suspected of communist leanings is straight kicked out. And such is the emotional excitement about Communism that sometimes good, noble, and progressive civil servants find themselves in serious difficulties.

Finally, we may refer to the problem of the Public Service [illegible]

the nature of the state. Sometimes it is argued that the state

which is the sovereign authority in society and which, in a democracy, represents the collective will of the whole community should be allowed to perform its functions unhampered. The unionisation of the public services might lead to situations in which the state's work is obstructed and its authority defied. A little consideration shows that all governmental activity is not related to the sovereignty of the state. Some functions like law enforcement, defence, and foreign affairs obviously fall in that class; but others such as maintenance of postal services, provision of schools, colleges and hospitals, transport and communications services, etc. quite obviously do not. In the field of the sovereign functions of the state, the right to organise may well be denied on the ground that the uniqueness of these governmental functions do not admit of any interruption. In a democracy it seems better to fix the conditions of service of public employees in consultation with them, than autocratically through an administrative fiat. This is not a negation of the state's sovereignty, as it only amounts to laying down a method of carrying out its functions. The state always retains the power to replace this method in favour of some other one. Perhaps the only services where the right to organise or strike can unquestionably be denied are the armed forces, services charged with the maintenance of order, and essential services. Indeed the right to associate is one of the basic freedoms which cannot be denied to any class of citizens and even if the state wishes to do so it could not prevent public servants as such from forming their own associations. Tha does not, however, mean that the association is recognised as a trade union empowered to engage in collective bargaining. In practice, employee unions are well established in the postal and clerical forces of the federal government in th

porations.

staff. The

wide field in the public services though the position regarding the right to strike does not appear to have received judicial clarification.

THE CIVIL SERVICE IN INDIA

In India, the government is said to be the largest single employer of workers. As in other states, so here, the numerical strength of the civil service has been constantly expanding. The service structure and the staffing arrangements have been developing from time to time to meet the nature and volume of administrative task devolving upon the government. After 1947 the civil service has been fully Indianized and its limited character has undergone a complete

longer maintenance of law ar

Its non-democratic approac..

earlier referred is also gradually changing. Public Corporations and Commissions are spiringing up at a rapid rate. Delegated

legislation is growing in volume. At the Centre, there are fourteen services classified as Class One. Horizontally there are four categories in India; Class One (equivalent to Administrative Class in Great Britain), Class II (equivalent to Executive Class in Great Britian), Class III (equivalent to clerical personnel), and Class IV (messengers and watchmen.) In the higher Secretariat staff there are five regular grades—Secretary, Joint Secretary, Deputy Secretary, Under-Secretary and Additional Secretary. Vertically, services in India are divided between Central Services, examinations for which are conducted by the Union Public Service Commission, and State services, which are supervised and managed by the State Public Service Commissions. In the states there are subordinate services, the examinations for which are conducted by the State Public Service Commissions. In 1961, the Central Government framed rules for the Constitution of two new services—the Indian Statistical Service and the Indian Economic Service, both of which will be controlled by the Ministry of Home Affairs, advised by a Board presided over by the Cabinet ... Sabha passed a ... create three new ... neers, the Indian ... th Service. These services have not yet been created and probably on the expiry of emergency, the matter will be considered.

In India, in general, the recruitment to the Civil Services both at the Centre and in the States is made by Public Service Com... Pre- sider ... can ... Commissions conduct competitive examinations of a general character, hold viva voce tests and make recommendations to the executive heads. But annually, the President and the Governors or the Rajpramukhs have to explain to the Legislatures the reasons why in specific cases the advice of the Commissions has not been accepted. This constitutes an effective safeguard against any disregard of the Commission's advice. The Legislatures, of course, have the final power to regulate the recruitment and conditions of service of persons appointed to the public services. The Indian Services are regulated by the All-India Services Act of 1951.

The Services have a reasonable security of tenure. A member of the Civil Services under the Union or a State can be dismissed or removed by ... hich appointed him, ... has been given t... pleasure of the President at the Centre and of the Governors or the Rajpramukhs in the States. If the President is satisfied that a person is unfit to be retained in the public service, he may be removed even without giving an opportunity to show cause against the action proposed. Mr. P. K. Das, former Deputy Commissioner of Tezpur who had been suspended for allegedly leaving

his post during the Chinese invasion in October 1962, was removed on January 22, 1963. The President's notification of the Union Home Ministry stated, "is satisfied that in the interests of the security of the state it is not expedient to give Mr. Das an opportunity to show cause against the action." Nor is there much to be said against the rules of promotion except that there should be sounder methods to detect merit and a more efficient system of penalties and incentives.

The Services in the pre-independence era used to be very efficient. Talent was attracted by good salaries and the social status which went with power. The civil servants moved in high society, lived well and had a good deal of power. He lorded it over the masses and was loyal to superiors. The Indian Civil Service and the Provincial Civil Services were the only avenues open to ambitious young persons. The only look-out of the civil servant was to carry out the orders of the Government whose sole objective was to ensure its dominance by force and awe. During the two years preceding Indepeuence, political uncertainty and the confusion resulting from partition brought about a decline in this efficiency.

Efforts are being made to establish closer contacts between the Public Service Commissions and the Universities and the Commissions and Government departments, and to improve the quality of the training centres for the probationers. On the whole, the Civil Services are politically honest. Their complete Indianisation and the resultant large scale recruitment after Independence has to a considerable extent broken casteism in the services. The so-called Burra Saheb mentality will, of course, die out only gradually. The basis of recruitment has, however, widened. And there is neither weightage in favour of a minority (except the scheduled castes) nor is there any discrimination. There is a move now to abolish the necessity of a University degree for candidates with a view to reducing the numbers at the Unisities and Colleges. An indirect result of this change may be a further broadening of the basis of the Civil Services, for an average Indian can hardly afford the experses of higher education. A civil servant in India, as in England, cannot actively participate in politics. He cannot contest a seat in the legislature without resigning his post. During the three general elections the Civil Service performed a gigantic task honestly. There might have been stray cases of tampering with the ballot boxes to the advantage of the Congress but, on the whole, the record was fair. However, the absence of an effective opposition removes one great factor which would have kept the civil servant completely out of political alliances.

Recently, there has been a general deterioration in the quality of the Civil Service as the reports of the Public Service Commissions amply prove. Partly, this is due to a fall in the standards of University education of which we have already spoken. The

sudden change of medium from English to Hindi at most of the educational institutions to a very large exent explains this deteriora-

a much higher social status than enjoyed by other professions, with the result that no popular contact is possible between the public and the administration.

One frequently hears of corruption of all kinds and the Planning Commission has taken note of it. We have already referred to the main causes and nature of corruption in India. Various anti-corruption measures are being taken both at the Centre and in the States. It goes without saying that as long as the Administration is not honest and sound no amount of planning can help a society. Public money, handled by unscrupulous people is so much money wasted. Taxes are sometimes evaded. Promotions are sometimes made irrespective of considerations of merit.

Then, again, one hears of what is called "red tape..' This means an unnecessary circulation of files from one office to another. But we should underline the work 'unnecessary'. In a democratic administration, the basic principle is that every thing should be accounted for and be 'reviewable', otherwise decisions would be regarded as arbitrary. And to ensure accountability, 'red tape' becomes necessary. Certain forms have to be adhered to. Only when in observing the forms the substance is lost, 'red tape' may become pernicious. A civil servant has been compared with a distinguished musician or scientist who uses and has mastered the hard and confining disciplines of music or science which the uninformed might view as red tape but which is the systematic way of arriving at achievements not possible to pursue effectively in an unsystematic way'. But when a musician takes long before he works out a tune, he exhausts the patience of the audience which in sheer disgust might leave and go home. Otherwise within the framework of a parliamentary democracy, forms are essential.

The truth is that the Civil Service today has become an integral part of democratic processes. It is able and, therefore, attracts power. It has a continuous tenure and, therefore, possesses expert knowledge. Governments are party governments and have party manifestoes to be implemented and, therefore, the Civi Service

regard to the civil service in India. In the first place, there is a
of trade unionism or
Its absence is a great
he experience of Britain
and the United States in this regard will be extremely helpful. Secondly, there is a very wide gap in the conditions of service

between the Indian Administrative Service and the Provincial Civil Service Officers. They are called upon to do practically the same type of work and the gap, in our view, must be narrowed. Again the contacts between civil servants and the University teachers must be increased so that both may benefit by understanding each others' point of view. After all the Universities are the nurseries of the civil services. Again, there must be more frequent exchanges among the I.A.S. officers between the Centre and the States. In fact, the Union Home Ministry in 1961 had to draw the attention of all Central Ministries to the rule of rotation of officers in the existing All-India Services between the Centre and the States. The problem of relationship between the civil services and the ministers is creating special difficulties in India. The doctrine of ministerial responsibility must be readily adhered to and the ministers must be extremely careful in putting their signatures on documents which involve vital interests of the State. The problem of reservation for the Scheduled Caste and the Scheduled Tribes sometimes creates bitter feelings in the country. In our view, the reservation must continue for the next twenty five years or so to bridge the gap between all sections of population. It is true that the Scheduled Caste officers in the Services create problems of

need for national solidarity. In 1959, the Union Government set up an All India Scheduled Castes and Tribes Pre-Examination Training Centre at the Allahabad University.[1] About 40 students are prepared for central services examination here. The centre is doing a fine job as the results indicate. In the light of increasing

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30—45.

If all the posts that are to be filled by regular competitive examinations, the overall quality of the civil service is bound to deteriorate. Civil servants must also be encouraged to go on occasional leave in order to undertake travels in different parts of the country. This will naturally widen the outlook and horizon of the officers and will go a long way in bringing about national integration. It must be that the Officer's Training Schools and administrative academies in India are not functioning properly. In most cases the Principal becomes a mere administrative boss, taking hardly any interest in the training imparted to the young officers. The problem of retirement has created almost a national controversy in this country. During the British period the age of retirement was 58. We have no part the retirement age, for, is important is that

1. Another has been opened at Bangalore and it started functioning in October 1963.

the retiring age once fixed should not be arbitrarily raised up or brought down, because this gives rise to suspicions of favouritism. The democratic controls over the civil srvice in India are very weak. On the one hand, a member of the Legislature or Parliament may frighten a civil servant into submission; on the other, the Legislature of a State or the Union Parliament cannot effectively guarantee that the civil servant will be above board. The District Magistrate is still the centre of gravity in a district. The tradition of rushing to him and not to the representative in the legislature is still there. This has a serious bearing on the question of discipline in the civil service which as we stated above, is declining in India.

THE CIVIL SERVICE IN FRANCE

The essential characteristics of the French administrative system are derived from the close connection between the administration and the political sovereign over the centuries. The stability and the continuity of the administrative system have, therefore, led to the survival within administrative life of principles belonging to vanquished political systems. However, it does not mean that the French administration has remained static. New ideas and new social forces have introduced new concepts which have destroyed the older structure and have basically modified its character. In France, the superiority of the state is a basic maxim. The notion of democracy here expresses itself essentially in the sovereignty of the people and the will of the people considered as the source of all sovereignty finds expressions in the law made by [illegible] s a fundamental [illegible] istered between [illegible] and the private citizen. There is the right of the individual which forms private law, but there is the right of the state which is public law. The latter is independent and has its own rules and regulations. When this basic principle is applied [illegible] ations between the [illegible] common law rela- [illegible] employers and the employees. The administration being organised according to the principle of authority, its relations with its agents cannot be founded on equality and cannot be determined by contractual arrangements. In France, therefore, the conditions of employment of a civil servant are not determined as in the case of a contract for ordinary work, but they are decided unilaterally by the state.

Again, the French political tradition has been based on absolute power. What happened in the nineteenth century was that the doctrine of the absolute power of the monarch was only replaced [illegible]

THE CIVIL SERVICE IN CANADA AND AUSTRALIA

As late as 1878 nepotism and favouritism were the order of the day in Canada and every government could select for the civil service their own friends without any objection from anybody. Patronage and giving of rewards were accepted maxims. The functions of the state were few and far between and, therefore, the range of action for public servants was narrow. Method of recruitment was predominantly that of party patronage. The federal principle influenced the manner of distribution of this patronage. Just as the regions and provinces administered representation in the Cabinet, they also asked for a place for their sons in the public services, and a fair share of public contracts. The ministers who represented a given province in the cabinet, had the dominant voice in distributing patronage for the province, even to the extent of recommendations for vacant senatorships and judgeship. With the change of a government, civil servants were thrown out of their jobs in order to create the vacancies for the friends and favourites of the new government. The usual professed basis of dismissal was the alleged participation of the civil servant in party politics. The irony of the situation was that the appointments which followed these dismissals were almost invariably made in recognition of party services. The results were inefficiency, dishonesty, incompetency and general lethargy.

Following the introduction of competitive examination in Britain, in Canada also the movement of reform of civil service began after 1870. In 1880 a Royal Commission was set up to investigate into the problem and in 1882 the Canadian Civil Service Act was passed, providing for a Board to conduct an Entrance Examination. Since it was not to be a competitive examination the ministers were still to appoint anyone they chose. In 1908 another Civil Service Act was passed which created a Civil Service Commission independent of government. In 1918 and 1919, under the compulsion of public opinion, roused by the events of the war and by the disclosure of large scale corruption and war contracts a large number of public officials were brought under the control of the Commission. But at the same time, favouritism also continued to exist. Even at present all parties are interested in rewarding their representative followers, but majority of important posts are filled up on merit basis. Thus, the Canadian Civil Service

departments, a stand which sometimes leads to inefficiency. The Canadian Civil Service has largely been drawn from all sections of population and is, therefore, too close to the market place. The Canadian Civil Servant cannot be called as the arrogant bureaucrat, lusting for power. Promotions in Canada are governed

by formal tests or by the reports of superiors in the Departments. Treasury control over the civil service is increasing. As elsewhere, in Canada also there is coming into existence a large number of Boards, administrative agencies and bodies together with the increasing volume of delegated legislation.

As in Canada, so in Australia, with the march of time, the efficiency and the ability of the civil service has been increasing. It was in 1902 that public service of Australia was given statutory basis. In the earlier stages, seniority remained the most important factor in determining promotion and salaries remained unattractively low. In 1919-34, (during the Great Depression) the Senior University Economics Professors entered Government service. In 1933 the Public Service Act was amended to provide that one-tenth of each year's appointments should be opened to university graduates in the age of 25. The Second World War introduced number as well as quality in the Civil Service. The general influence of the civil service has constantly been increasing and the complaint of new despotism is also heard. But, as in Britain, so in Australia, the Cabinet can always be relied upon to check its over-zealous administrators. The relations between

if unsuccessful, resume his position in the service.

THE CIVIL SERVICE IN THE U.S.S.R.

The Civil Service in the U.S.S.R. plays a very significant role because the Soviet system is Planning par excellence. The Ministers are heads of Departments which maintain administrative boards and advisory councils. Each Department selects its own Civil Servants and there is no Central Public Service Commission to make recruitment on a Central basis. This makes for narrow

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for the various departments, and determination of "job classification and specifications for all officials." New entrants in the Service are subjected to rigorous training by senior officials and party leader through seminars, and field work. The pattern of training tends to emphasise the ideological factor. Achievements of officers are rewarded by quick promotions and state awards, failure or sabotage is punished. Salaries are quite decent. Control over Civil Service has been tightene

introduced by Khrushchev. The

ingly becoming more and more

CONCLUSIONS

From this survey of the administrative branch of the Govern-

ment, a few conclusions may now be drawn. In the first place, we must reconcile to the fact that the most predominant aspect of the business of government today is the executive, which runs the whole machinery with the aid and advice of the legislature and within the limits imposed by public opinion and the judiciary. The initiative in most matters is squarely in the hands of the executive. Within the executive, this initiative is passing more and more in the hands of the civil servant. The most fundamental problem of the theory of government, therefore, is that of putting checks and restraints on the administrator. The supreme check will be the educational level of the community and the will for freedom. A society which is determined to live a free life, will always succeed in doing it. The greatest enemy of freedom is fear and insecurity and in combating both, modern man has to rely more and more on the executive. With the increasing industrialization, technocracy is inevitable. The most effective barrier against the arbitrariness and the inhuman approach of the executive agencies is a strong and impartial judiciary, and frequent elections in which the executive is held to account before the political masters. Much of course, would depend upon the level of content of education provided in a society. The colleges and universities are the cradle of freedom. The real problem is to keep the executive in harmony with the aspirations of the people, and with proper education, one can be certain of this harmony. That done, the executive will be able to apply the policy formulated by a responsible ministry in spirit and in detail in the sense intended by the Legislative Assembly.

12

LOCAL SELF= GOVERNMENT

GENERAL THEORY OF LOCAL GOVERNMENT

cratic system of government and that there may even be an intrinsic contradiction between the one and the other. Dr. Moulin, addressing the Congress of the International Political Science Association at the Hague, in September, 1952 insisted that far from being the best training for the exercise of democracy at the State level, the realities of local political life are so little in conformity with the spirit and ethics of a democracy, that they usually tend to distort and debase the processes of democracy, first at the municipal level and then at the national level. He pointed out that local authorities are extremely jealous of their autonomy and fall a prey to strong local pressures, that the local government is 'essentially a training in the defence of interests which are strictly

necessary, sacrificed." He has quoted the cases of Greece in the 5th and 4th centuries B.C. and of Italy and the Netherlands in the 15th century when 'an over-intense local life finally came into conflict with the evolution and application of a broad over-all policy and led to anarchy, the mother of dictatorship.'

Similarly, Professor Langrod has suggested that the exercise of local government is not always the best apprenticeship for the practice of democracy at the state level'. Indeed, it can with some force be maintained that there are basic differences in the nature of affairs to be handled at the central level and those handled at the local level. The Central Government has to face the problems of defence, foreign policy and national development, of which a local man has no understanding and which he can only approach in a most general fashion. "A local administrator".

Dr. Moulin has written, "no matter how energetic he may be, has not necessarily the making of a great statesmen". He may have skill necessary to deal with local issues but he may not have the mental equipment to handle broader national issues which call for a judgment which cannot be cultivated in the local arena. Again, it has been argued that municipal government has never been democratic in the modern meaning of the word for it might have ,ensured the safety of the person, but it has cared little about freedom and the Rights of Man.

Now it is easy to meet most of these arguments. To the question of the inability of the local administrator to understand and handle broader national issues an answer has been given that 'participation in local politics, while it might at times detract from the wider issues, nevertheless adds to the sum of experience by which an individual forms his own judgment of what is just and is made aware of what others consider just'; that those who are active in local affairs are normally not so parochial that they cannot respond to the just claims of others when these are pointed out to them; an experience of administration on the local level can teach man some of the limitations of political action; that participation in the affairs of the local community will help man to know better, what constitutes justice and will make it easier, not more difficult for him to give a more sympathetic hearing to the over-riding claims of the wider community; and finally that a system of local government constitutes an effective basis for democracy as it affords 'invaluable opportunities' and gives an insight into political activity and political justice.

Indeed, the practical need of local government in modern democratic states is obvious. The population being large and complex and the area being vast, we come to have complex local problems and complex central issues. The two sets of problems, even if they do not require different sets of qualities for their solution require different kinds of experience; and experience gained on the spot naturally leads to a much better and much quicker solution. The administration of local affairs from outside will lack, the vitalising ability to be responsive to local opinion'. It may be a little more efficient (although even that is doubtful) but it will very certainly fail to evoke either 'interest or responsibility'. There is also the practical question of the incidence of taxation. "If a service is exclusively applied to the benefit of a particular district it is obviously only fair that the inhabitants of the district should pay for it." But the most important argument for local government is its educative value. It may be correct that local problems are different from those of the centre, but it is difficult to see how different sets of qualities are needed to solve the two kinds of problems. Basically there will be no difference. A consciousness of one's rights and duties, honesty, the desire to understand public issues and public spirit—these are some of the qualities needed as much for the handling of local affairs as for

central. "A man who realizes that his street is badly paved because a body of persons directly under his view and influence are inefficient begins to have a sense of the network of interests in which he is involved. Local Government, in other words, is educative in perhaps a higher degree, at least contingently, than any other part of government."

Furthermore, in a backward country like India, which is committed to the establishment of a welfare state within the framework of parliamentary democracy, an effective and balanced system of local government can go a long way. It is bound to have a vital place in planning in India as we will shortly notice. On the one hand, there is the need of a strong centralised state in India, and, on the other, the association of local interest and opinion is an essential factor in the promotion of development schemes. Thus, the pace at which progress should take place' is not to be sacrificed and at the same time the "formidable pressure", of a centralised state is to be avoided. Dr. Moulin has called our citilization which is infavourable, ıdividual life. We are living in a on equality and justice at any price rather than on safeguarding freedom. In such a world local self-government has little hope of survival. But just as the growth of delegated legislative need not completely destroy the foundations of the Rule of Law, similarly equality and justice and a positive theory of State activity need not sound the death-knell of local self-government. There is no essential contradiction between ,a liberal democracy and 'an egalitarian and majoritiarian democracy.'

Modern States are country states and they confront the need of developing some positive methods to bring about their political, territorial and administrative integration. This can be done either by making each major functional department or ministry of a Central Government administer its services directly throughout a nation, or the objective can be realised by the application of a measure of administrative decentralisation which would provide some recognition of local diversity while still permitting the retention of political centralisation. Regional and local administrative units can be established and be made responsible to the Central Government and assigned the task of co-ordinating all national Central agencies within their terri- be provided directly. Neither of eal local government and yet both would take the services of government to all parts of the nation

cultural, ideological or religious, it would be perfectly justified if the state is organised on a unitary rather than a federal basis. The entire administration can be easily carried on from one single centre with necessary administrative flexibility achieved through

a measure of territorial decentralisation. This would not only lead to efficiency, but also to economy. This combination of political centralisation and administrative decentralisation would also respond to the call of modern economics and technology. As one authority has put it: 'These two major forces of our age require broad geographical areas for their successful operation and the related social and material problems which arise in their wake are also dependent for their resolution on broader areas than the many traditional sub-sections of a country". Modern technologically oriented economy is not only national, it is actually international in scope. An under-developed country like India must not only create expanded domestic market based upon integration of all parts of the country, it must also require foreign manufactured goods, capital and technical knowledge. Even in highly industrialised countries like the United States, Germany and Britain, one will find an increasing political and administrative centralisation. "One of the outstanding characteristics of modernity is that people do not become more but become less isolated from each other as well as more dependent on each other." Societies which are plural and communities which suffer from international schism need administrative centralisation still more. A nation whose will is fragmented by the absence of many common hopes and aspirations will need administrative cohesion as an important substitute for basic mass agreement. In a country like France, this administrative cohesion has served a very useful purpose from this point of view. In countries like India where there are serious threats of internal disorder, there is mass illiteracy, lack of democratic tradition and political inexperience, the slogan of local self government can be used as a cover for rebellious activities and for secessionist movements. In such countries local self-government may even encourage nepotism mal-administration, bossism and corruption. Votes may be promised for consideration and may even be purchased. Forces of casteism and communalism will powerfully influence the course of local self-government politics. This has been a characteristic experience of municipal activity in India in a large number of cases. But on the other side it can be argued that an effective system of local self-government is the surest guarantee against dictatorship. It is no mere accident that all modern dictatorships have tried to suppress effective local-government as a serious obstacle to the realisation of their ambitions. At the Potsdam Conference (1945) all powers insisted that in the post-war Germany local self-government must be positively encouraged as a very helpful inducement to the growth of democratic thought and habits. Again, a successful system of local self-government will also enable a community to experiment with and to develop new techniques on a local plane without enforcing it on the entire nation. If a particular technique or method is found useful in one locality, it can be extended easily to cover the rest. A particular method may suit the needs and requirement of one locality only

and not to the rest of society. Local self-government will permit this experimentation and this divergence. These factors will also contribute to the efficiency of operation of the Central Government itself. The national authorities would be saved from the necessity to devote a great deal of time and energy to issues which might better be handled by the local units. Finally, there is the supreme democratic argument in favour of local self-government that it enables the citizens to have a feeling of contact with government.

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But in our enthusiasm for decentralization and local-self government we should not ignore general welfare which is more than the sum of local welfare. It will be equally a mistake to impose a centralisation which kills all initiative, which dries up the sources of leadership, which drives out diversities, stultifies experimentation and prevents local problems form being dealt with locally. As elsewhere, here also a balanced compromise is necessary, so that the resulting system may respond to divergent local needs without doing any damage to the cause either of democracy or of good government. It should be constantly emphasised that there is no basic contradiction between democracy and good government. Success in politics lies in

he two and this can be done by a suc-

system. A properly organised and

of local-government is a *sine qua non* for democracy, nationl defence, economic development and a smooth social process.

LOCAL SELF-GOVERNMENT IN BRITAIN

county boroughts and administrative counties. Administrative counties are further divided into three types of country districts, *viz*: municipal or non-cou

rural districts, which are

, set up under an Act of Parliament

rliament. There are in addition, the local authorities for London, which are unlike those in the rest of the country and are governed in their constitution by a separate legal code. The local authorities in Scotland are regulated by the Local Government (Scotland) Act, 1947. This is

a consolidating Act and is based partly on the Local Government (Scotland) Act, 1929, which fundamentally altered the constitution of local government in Scotland by reducing the number of local authorities administering public services for very small areas, and by unifying the administrative and financial control of the major services under a single authority in each area.

Nearly all local authorities are what are known as 'corporations', which means that they have a continuous existence irrespective of their personnel, and have power to hold property as though they were individuals. The 'body corporate' may be the council or it may be the whole of the local government electors, depending on the terms of the Act or Charter. Scottish local government bodies are partially subject to indirect election; but in England and Wales all local authorities are directly elected by the citizens whom it will be their duty to serve. In this respect there is no difference between the administrative counties, the county districts, the parishes or the boroughs. In their internal composition, however, boroughs do differ from other kinds of local authority; for they have a far longer history of self-government, and have been allowed to retain some of their ancient forms. Today, county boroughs can be created only by Private Bill legislation, and then only if the authority seeking the new status has attained a population figure of 75,000. Charters of Incorporation of urban or rural districts (usually the former) as municipal boroughs are granted by the Sovereign on the advice of the Privy Council following an inquiry and the recommendations by the Minister of Housing and Local Government. There is no statutory limit of population but petitioning authorities are unlikely to be successful unless their population is at least 20,000.

Both types of borough—the County Boroughs and Non-County Boroughs—are governed by municipal corporation, which consist of the mayor, aldermen and 'burgesses', who are persons enrolled upon the local government register of electors for the borough and are now known as the local government electors. If the borough is a city, the designation is 'mayor, aldermen and citizens thereof'; and if the city has a Lord Mayor, he is so described in the title. All municipal corporations may act through the council of the borou[illegible]
aldermen and the counci[illegible]
is fixed by the Charter, [illegible]
as that by which the wards of borough may be altered under the existing law, to wit, by Order in Council in the case of county or non-county borough, and any order of the Home Secretary in the case of a metropolitan borough. Councillors are elected by the [illegible]
from among the council or from persons qualified for election as councillors once a year. He holds office for one year, may offer

himself for re-election, and may appoint, in writing, a member of his council to act as deputy-mayor. The aldermen, who are [illegible] councillors or persons [illegible] years. They number [illegible] of them retire every three years. Every borough council is required by law to hold an annual meeting, and at least three other meetings, but most councils meet regularly once a month.

The county council is the local authority for the administrative county, and consists of a chairman, aldermen and councillors. The number of county councillors is regulated by the Secretary of State for the Home Department, except in the case of London. As a rule, the county council holds only the statutory meetings, *viz.*, the annual meeting and at least three other meetings. The areas administered by county councils vary considerably in size, for sixty-two of the sixty six administrative counties (including the County of London) are identical with the old geographical counties, the boundaries of which have been practically unchanged since Norman times. The smallest county in England has a population of about 20,000, while the largest (outside London) has one of over two and a quarter million.

Urban district and rural district councils are similarly constituted, each consisting of a chairman and councillors. The number of councillors varies from district to district, but there must be at least one for every parish of 300 population. Elections take place annually, the councillors being elected for three years by the local government electors. As a rule, one-third of the councillors retire annually, but acting upon a resolution passed by two-thirds of the members present at a council meeting, the county council may by order direct that all the district councillors shall go out of office together in every third year. The chairman is elected by the councillors and may be elected from outside the councillors provided he holds the necessary qualifications. In England and Wales parish councils are elected for all rural parishes where the population is 300 or over.

The peculiar constitution of local government in London derives partly from its size, which has created special problems of administration, but mainly from its importance as the capital city and the centre of trade and commerce. The London County Council shares administrative responsibility for the 117 square miles of the metropolis with the 28 metropolitan borough councils and, to a lesser extent, with the Corporation of the City of London. It has 150 members, consisting of 129 elected representatives and 21 aldermen. The Corporation of the City of London administers the square mile in the heart of the capital, which is of very ancient date. It acts, as it has acted for centuries, through three courts: the Court of Common Hall, consisting of the Lord Mayor, the sheriffs, the aldermen and such of the liverymen of the seventy or so City Companies as are freemen of the city; the

Court of Aldermen, consisting of twenty-six aldermen elected for life; and the Court of Common Council, consisting of the Lord Mayor, the aldermen, and two hundred and six common councilmen, elected annually in different proportions in the twenty six wards of the city by about 27,000 voters whose right to vote is based mainly on property qualifications. Metropolitan Borough Councils consist of a mayor, aldermen and councillors.

The county councils in Scotland are presided over by Conveners, who are chosen by the members of the council from among the councillors (no outside person may be appointed) to hold office for three years. The counties of cities are administered by town councils, which are all-purpose authorities analogous to the English county borough councils. The town council consists of the Lord Provost, the bailies and the councillors. Large and small burghs, i.e., generally speaking, burghs with population figures of over and under 20,000 respectively, are administered by town councils. They consist of the Provost, the bailies and the councillors. Town council elections are held annually, one-third of the councillors retiring every year. The districts are administered by district councils, which are concerned generally with matters of amenity and certain minor functions which may be delegated to them by county councils. The degree of delegation varies widely throughout the country.

There is very little variation in the election of councillors as between one local authority and another, and virtually the same principles apply in a parish as in a county or in a county of a city in Scotland. The whole system is comparatively modern (except in the case of the City of London, which has its own traditional rules); and it has recently been brought up to date by the passing of the Representation of the People Act, 1949. Under the provisions of the 1949 Act, any person is entitled to vote at a local government election, provided that he or she is a British subjecof 21 years or over or a citizen of the Republic of Ireland, does not suffer from any legal incapacity to vote, is resident in the area for which the election is being held, or has a non-resident qualifications therein. Voting takes place at polling stations arranged by the Concil concerned, under the supervision of the returning officer specially appointed for the purpose. In England and Wales, candidates for election usually stand either as Independents or as representatives of one of the national political parties. Eligibility for nomination as a candidate depends in the first place upon registration as an elector for the area, and thereafter on a number of statutory qualifications and disqualifications designed to secure that the candidate is a suitable person for the office and is likely to have the interests of the area at heart. In Parliamentary elections, all constituencies have now only one member, and, therefore, the contest is between several candidates for one seat. In local government elections, on the other hand, there is considerable choice, for there are usually a good many

vacancies to be filled; and in order to avoid undue confusion in the mind of the elector, the ward system has been devised.

Local authorities are free to a very considerable extent to make their own internal arrangements and to choose the means and methods by which they will discharge their responsibilities. The fact that all types of council have set up very much the same kind of administrative machinery is less the result of statutory requirements than of long experience in the organization of community services and affairs. The committee system, which is used by all types of local authority, is of particular value to the larger councils, for it serves to bring them into closer contact with the management of the services they provide than would otherwise be possible. Generally speaking, committees are remarkably free from legal restrictions and even those among them which are known as 'statutory committees' are constituted according to individual requirements and not according to any set pattern laid down. Every council has a general power to appoint such staff as it deems necessary to carry out its work. Officers are normally of three kinds: (1) heads of departments, whose training, experience and qualifications fit them for the expert work involved, and who attend council meetings in an advisory capacity; (2) a variety of subordinate officers employed in a professional, technical or clerical capacity; and (3) a large number of manual workers, who are employed to do the actual physical work, *e.g.*, road construction and maintenance, building, refuse collection and disposal, footpath clearing, *etc.*, for which the council may be responsible. As a rule, senior appointments are made at the instance of the committee or committees particularly concerned. Rates of pay and conditions of service for local authority staff, although theoretically within the jurisdiction of the employing council, are settled by Whitley Councils of which the three largest are: the National Joint Council for Local Authorities Administrative, Professional, Technical and Clerical Services; the Local Authority National Joint Council for Local Authorities' Services (Manual Workers); and the Local Authorities Joint Council for County Roadmen. Movement of officers between one council and another is the normal practice and occurs frequently. All local government officers of whatever standing in England and Wales are expected to regulate their behaviour according to a code of ethics drawn up by the National Joint Council.

The primary duty of every council is to apply and administer policies prescribed and defined by Parliament. The scope of local government is limited by the same means as its functions are prescribed and defined—that is to say, by Acts of Parliament. It is as illegal—for any council to go beyond the limit fixed for its activities as it is for it to fail to provide any statutory service required. If any council exceeds its powers, whether knowingly or unknowingly; it may be called to order before the Courts; and an injunction can be served upon it to restrain it from what it

has been doing or from what it proposes to do. The services provided by the councils are generally classified under three heads—(1) Environmental Services. which are services designed to secure and improve the citizen's surroundings; (2) Protective Services, which include the fire service, the civil defence service and the police; (3) Personal Service, which are designed to 'cultivate the best physical mental and moral potentialities of each individual'. There are also the trading services, which are now less widespread than before the war, although examples may still be found, *e.g.*, civic restaurants and municipal transport, which is most important in the four Scottish cities. Some of the trading services, *e.g.*, gas and electricity, were discontinued by the relevant nationalization Acts.

The amount of money spent by local authorities every year on revenue account runs into several hundred million pounds. There is also considerable capital expenditure. Income is derived from Government grants, from local rates, from loans, from trading receipts, rents, fees and from other miscellaneous sources. Control of finance is usually exercised internally on behalf of the council by a specially appointed Finance Committee, whose function it is to watch the activities of the spending committees from the standpoint of the council's financial policy. Such a committee is compulsory for every county council and the metropolitan borough councils in London; and although there is no statutory obligation upon any other type of council, it is customary for all except the smallest to make the appointment. In general, the system of exchequer grants in Scotland is similar to that in England and Wales, *e.g.*, percentage and writ grants are payable to Scottish local authorities in respect of specific services, such as education, police and housing. The finances of local government in Northern Ireland are in most respects similar to those in England and Wales—that is to say, income is derived from grants, rates, rents, loans *etc.*

The ties connecting local government with the central administration are (*i*) the power of Parliament to pass those Acts which it deems desirable to be administered by local authorities; (*ii*) the interpretation which is put upon those Acts by the Courts as to the intentions of the legislature; and (*iii*) the supervision exercised by those Departments which are charged with the duty of securing the efficient functioning of services for which their Ministers have been made responsible by Parliament. Frequent dicussions have been held during recent years concerning the desirable extent of central intervention in local government affairs, but so far no generally acceptable conclusion has been reached. Following the Report of the Committee set up in January 1949 by the Chancellor of the Exchequer, to review and co-ordinate arrangements for ensuring economy in the use of manpower by local authorities and by Government Departments concerned with local government in England and Wales,

which contained recommendations for more autonomy, the Minister of Health stated that the Government believed that 'the right approach to the relationship between central and local government must be found in the two principles that local authorities are responsible bodies competent to discharge their own functions......and that the controls necessary to secure the objectives of Government policy and financial administration should be concentrated at certain key points leaving as much as possible of the detailed administration of a scheme or service to the local authority'.

Finally, we may refer to some of the basic problems local self-government in England is facing today. The system is prone to three defects first, an undue absorption of the elected personnel in administrative detail, to the neglect of major functions in the spheres of policy and planning; secondly, the difficulty of co-ordinating committees and departments; and thirdly, the failure to make any constitutional provision for a centre of initiative and drive. All three weaknesses accrue through the establishment of one body, and that an elected Council to be responsible for matters of administration as well as matters of Policy. Much can be done to prevent or counteract these weaknesses by making creative use of officers.

LOCAL SELF-GOVERNMENT IN INDIA

Our local government system is a western institution deliberately introduced here. In this sphere there was little room for adaptation. Mr. Hugh Tinker of the London University in his recent study (The Foundations of Local Self-Government in India, Pakistan and Burma, 1954) has pointed out that the local government system in India originated from two motives—administrative and political. Before 1882 it was intended to teach people not to look to Government for things which they can do far better themselves and in 1882 Lord Ripon's Resolution was planned to serve "as an instrument of political and popular education". In this second phase local self-government was [illegible] able direc- [illegible] And since [illegible] the chang-ing character of local self-government. The Montford Reforms [illegible] fields in which an [illegible] sing association of [illegible]. The inauguration [illegible] ave a fresh impetus to the development of local government and its democratisation. After the transfer of power, in practically every State laws have been passed to establish Panchayats.

In India, the units of local self-government have to work under serious disabilities which have prevented them from working

be the development of local self governing institutions into efficient instruments of administration". Of course, much will depend on the spirit and interest of the people, for howsoever, perfect a system, ultimately it depends on who works it and in what manner. Success in the working of local self-government in India may result in the development of civic sense, initiative, responsibility and public spirit so important for parliamentary democracy and planning.

PLANNING AND LOCAL SELF-GOVERNMENT IN INDIA

The Community Development Programme was initiated in 1952 with a view to mobilizing the resources in men and materials for the comprehensive development of the village communities. Its aim was to stimulate local participation and effort to the maximum extent possible. In the beginning reliance was placed on *ad-hoc* bodies and groups of people at village, block and district levels for generating the community efforts. But it was found by the Mehta Committee that "we will never be able to evoke local interest and excite local initiative in the field of development, unless we create representative and democratic institutions and invest them with adequate power and appropriate finances". This discovery led to the inauguration of the Panchayati Raj system with three tiers of local representative institutions, the Panchayat at the village level, the Panchayat Samiti at the Block level, and the Zilla Parishad at the district level. According to the Balwant Rai Mehta Committee as well as the schemes adopted by the majority [illegible] Samiti of [illegible] the unit for planning [illegible] Panchayat Samiti controlling the Block is the main force for pushing through all programmes of economic uplift. While we realize the importance of the [illegible] warning that in our new fou[illegible] local institutions, the Samiti, [illegible] growth of the Village Panchayat,. In fact, it should be one of our foremost duties to fosterthe development of the Village Panchayat, so that it may soon come of age and assume the responsibilities that properly belong to it. For, our Constitution enjoins on us to develop the Village Panchayat as a primary unit of self-government. Further the Village Panchayat is the one body closest to the people, and hence the best suited to supply the local interest and supervision and ensure that the expenditure of money on local objects conforms to the needs and wishes of the locality. The development of the Panchayat is vital to the development of the personality of the village people, their capacity to shoulder larger burdens in the future, and their willingness to make sacrifices for the good of the community. No doubt, several of the Panchayats may not, in the present, be capable for willing to perform the tasks expected of them. We need not be discouraged by this.

[illegible] enumerated above, the Panchayat would support and help such co-operatives rather than take up the activities themselves. Where such co-operatives do not exist, the functions would be taken up by the Panchayats as far as it is possible for them to do so. The Panchayat would, however, encourage the growth of functional co-orerative for taking over these activities wherever possible.

With regard to village industries particularly agro-industries, Panchayats will have to provide active encouragement of decentralization in the economic field as well as in the political sphere. Encouragement of village industries may take the form of promotion of artisan's co-operatives for each group of artisans like weavers, cobblers, oilmen, *etc.* If co-operatives of artisans are not available Panchayats can start small industries for the benefit of the community. With regard to pisciculture, certain village tanks are being handed over to the Panchayats for the purpose. It is possible for the Panchayat to lease out these tanks or to undertake pisciculture themselves. Where a fishermen's co-operatives exist, the Panchayat would lease out the tank to such a co-operative without calling for competitive tenders. If there are sufficient number of fishermen in the village, steps would be taken actively to promote such a co-operative, if one does not exist. Till such time as such co-operatives come up, the Panchayat may undertake pisciculture directly.

Close co-ordination between the Panchayat and Co-operatives will be necessary for preparing and implementing the village production plan and the industrial farm plans. It is clear that such coordination can be better achieved if the panchayat and the co-operative have co-terminus jurisdiction. While co-terminus jurisdiction would be the long range objective, it would not be desirable to insist on this as a rigid principle, as this would interfere with the working of a large number of autonomous co-operatives already on the field. In due course they would fill in the broad pattern.

Finally, the conception of Panchayat Raj implies the grant of full authority in certain matters to these elected bodies and providing them with the necessary resources. They must be made responsible not by putting officials over their heads and making officials responsible but by making the Panches themselves responsible. These bodies may make mistakes but they must be allowed to learn in the hard school of experience, even by making mistakes, as there is no other way of training them for their new responsibilities.

While this may be true, it must be admitted that there is grave risk in entrusting thousands of bodies with the responsible task of implementing Plan schemes when neither they nor those who elect

them have the necessary experience and the atmosphere in the villages is in the main feudalistic, with casteism coming in as additional complication. With a hundr dfold multiplication in implemen ing placed at at. In such a to them for development purposes are not diverted to other less desirable objects, or, indeed, wasted, must necessarily lie with officials. Here, again, a balance must be struck between official control and entrusting of full responsibilities to village Panchayats and Panchayat Unions. To err on either side will be to run the risk of failure of a great experiment which even today is more an act of faith than of worldly wisdom. It must also be emphasised that you will not be able to go very far with the package programme unless you make common cause with the Panchayat Raj institutions which have been brought into being. Democracy in Parliament cannot be real unless it is organically linked with the grass roots.

In the United States, local governments are a creature and a dependency of the state government not of the national government. The states themselves were created by their original inhabitants and were subsequently admitted to the Union. Their powers are limited but not derived from the national constitution. The area of local government in the United States includes, therefore, only such units as counties, cities, towns, villages, and special districts, all of which have been set up by state governments. The largest unit of the states are divided. square miles in area average is a little ov interests. Their government is simple and uniform and the chief governing institution is either the Board of Commissioners or the Board of Supervisors. Each County has several administrative offices such as those of education, charity and highways, generally headed by an elected officer. Theoretically these officers are under the control of the Board, but practically they are independent. The main legal officers of the county are the Sheriffs and the County Judge. County functions are most highly developed in the South, where health and education are often primarily a county responsibility. The county, in fact, is an important judicial and fiscal unit of the state and is responsible for the enforcement of laws, collection of taxes and management of elections. It may also serve as an electoral district for the state legislature. It plays an important part in the construction and repairs of roads and is responsible for electing its own officials. The county has sometimes been called as "a dark continent of American Politics." Practically in no county there is any single executive to supervise the administration; there are too many Commissioners or supervisors and there is plenty of overlapping and confusion in the administration. Too many county officials are elective and in fact

there are too many counties in the United States. Without regard to the local needs and reform there is an atificial uniformity in practically all the counties.

The most enterprising units of American local government are the cities. In many respects the relationship between the state administration and the local governing units within its borders is similar to that which exists between the federal and state government. City governments obtain their charters wherein municipal objectives are described and the powers defined from the city organisation. Yet the city government is by no means subservient to the state unit and in many fields of activities, is entirely autonomous. As the scope of governing units is reduced, the activities of administration become very closely identified with the particular requirements of the community. The concentration of large numbers of people within the city boundaries, automatically, produces complex administrative problems. The popular saying in the United States is that next to the President, the Mayor of New York City has the most difficult administrative position in the country. Today, fifty percent of the entire population of the United States are city dwellers and this fact is a measure of the importance of the Municipal administrative unit in the pattern of government of that country. Without doubt the objective of the city government is to establish and maintain a community which is a good place to live in and work. The city government looks after health and sanitation, protects the citizen against tainted meat, spoiled food, impure water and milk; it looks after public hospi [illegible] with the duty of preventing the [illegible] Health officials maintain a record [illegible]. The city government pays careful attention to the removal of trash, garbage and other waste material. The streets of a city are also its responsibility. The city police force which is an important unit of the municipal administration is responsible for maintaining order and protecting the citizens from the criminals. The city also guards against fire and standing buildings are inspected regularly and the wiring, *heating plants and chimneys are frequently examined. The city* provides for education and cares for the sick and the needy, the insane and the orphans. The city governments are responsible for planning for the future. And for this Planning Departments are maintained. The City provides recreation and in some cities there are Public Utility Companies which supply gas, electricity, telephone service and bus service.

There are three general plans of city Government—the Mayor-Council Plan, the Commission-form of Government, and the city Manager Plan. In the Mayor-Council Plan, the executive power is entrusted to a popularly elected Mayor and the legislative power to a similarly constituted Council which is usually unicameral. The members of the council are called Aldermen or Council men and are elected from city Districts called Wards.

In some cities the voters of the whole city elect all the aldermen. In the Commission form of Government the voter elect officials who form a government group called a Commission. The Commission may contain as many as five members and they have legislative, executive and administrative powers. Each Commissioner is the Head of an administrative department. The work of the city is divided between several Departments. There is usually a Mayor either popularly elected or chosen by or from the Commission, but his powers are very little. Here the principle of

a manager appointed by and responsible to the council. The city Manager appoints the heads of departments and some of the other officers. The various departments are responsible for conducting the city administration. The Manager is responsible for the enforcement of the ordinances passed by the council. He is *supposed to be non-political and may even be chosen from outside* the city to escape partisan affiliation. The people retain control over the city government because the council can dismiss the *Manager at any time. Each city has its own Court system and* the Judges of these courts are elected either by the voters or they are appointed by the city council or Commission or by the Governor of the state. Unlike the county the city does not serve as an administrative district for the state and in the main the city is occupied by local, legislative, administrative and judicial questions.

Other lo(

Townships,

of New Engl

Here the principal governing authority is the Town meeting, which is the assembly of all citizens possessing chief legislative power. *The Town meeting can elect executive officials.* Mid-western Townships are insignificant as compared to those of New England. In a village the legislative power is exercised by a meeting of the village voters and executive power is granted to a Mayor. In addition to these units, different states have created many special Districts, primarily of four types—Sanitary, Water control, School and Public Utility. These, even more than the outmoded county or Township in a state called a small area, clutter and confuse the local government picture. Although modern means of transport and communication have rendered these units superfluous, local pride and vested interest of officials combine to thwart their abolition.

Finally it may be stated that the American Municipal Government is notorious for its corruption. Lord Bryce called the City "the disgrace of American Government" About fifty years ago Steffens wrote: "The Shame of the Cities", *in which he exposed* the prevailing corruption. Since then improvements have, of course,

been made. At present city government is much better, more professional and efficient, less partisan and more honest. But on the whole graft remains and the average American pays little attention to local government affairs.

While in Britain local governments derive their authority from and the limits of their powers are marked out by, Parliament, in the United States as well as in Canada, the constitutions assign local government exclusively to the states and provinces. Local self-government in Canada has been powerfully influenced by the American practice. While the Canadian cities have never adopted an outright separation of powers between mayor and the council with its weakening diffusion of power and responsibility, there has been a considerable use of independent *ad hoc* authorities for particular purposes, some elected and some appointed. In the bigger urban municipalities, in every province the local police has been kept out of politics and placed under a police Commission, which is rather independent of the local unit. In some provinces, independently elected public utility Commissions operate the municipal owned public utilities. In many states management of the public library is controlled by library Board. Thus, in Canada, local Councils are obliged to share powers of local government with extraneous agencies. It is the Mayor Council Plan which is now making progress in Canada and has been adopted by about forty Canadian cities. The general functions of local self-government in Canada are broadly similar to those in America and England. While in Britain the association between the Centre and the local self-government units is intimate, nothing comparable has yet emerged in the United States and Canada. In fact, neither of them has developed the art of local government to that point of perfection to which it has been achieved in Britain. Municipal civil service in Canada and in the United States are not nearly as good in quality as in Britain. The result has been a tendency in both countries to take particular services entirely away from local governments and make them sole responsibility of State or provincial or national governments. This tendency has been further accentuated by the existence of federalism with its intermediate level of governments. While in Birtain it would be fantastic for the central government to take over any significant number of the services that local governments supply, it is not so in America or in Canada, where the administration of these services can be distributed among fifty or ten governments.

Thus, federalism can be employed not only for decentralization but also for a modified centralisation. In fact, centralization is a persistent trend of present day politics. Another trend is that the powers relative to local government that are shifting more and more to the Centre, or more than often exercised by the executive than by the legislature. The legislature in making laws about local government often legislates in broad general terms and leaves the detailed rules, decisions and enforcement to a department of

the Central Government. "Aggrandizement of the executive and growing reliance on the executive processes are significant features of the changing relationships between local and senior governments."

Finally, a trend in the Anglo-American Local-Self Government has been a definite decline of local autonomy. Even in Britain there is a widespread concern today, about the future of local self-government.

LOCAL SELF-GOVERNMENT IN FRANCE AND SWITZERLAND

The French system of local self-government is characterized by a remarkable symmetry and a great capacity for centralization. In fact the countries of continental Europe have hardly a strong tradition of autonomy and local government. Until the end of nineteenth century and early twentieth century there was a tangible trend towards municipal self-government in Europe, which was however, reversed with the advent of dictatorship, which used local government as a mere instrument of central authority. In France the important units of local government are the Department, the District (Arrondissement), the Canton and the Commune. The Department is the largest area of local government. The Legislative authority of the Department is a Council elected by manhood suffrage. But the Council does not possess unrestricted powers

it shall and shall not contain. On the other hand, its powers are limited by the Prefect who is the chief official appointed actually by the Minister of the Interior at Paris for a three-year period. Under the Fifth Republic of General de Gaulle, he continues to be the agent of the Central Government and all disputes between the Prefect and the Council of the Department are resolved by the Minister of the Interior. The latter may dismiss the Prefect or even dissolve the Council of the Department and call a new election. Thus, the Prefect is the representative of the national government in the Department and is obliged to carry out the policy of the French-Cabinet on the local level. Subject to this limitation, he is a local executive of great power responsible only to the Minister of the Interior. Laws made by the French Legislature restrict the scope of the Council of the Department to a very narrow sphere and the Prefect is expected to see that the Department's Council does not travel beyond its scope.

An Arrondissement is rather insignificant and is not even incorporated. Government Departments comprise of a Sub-Prefect appointed

Council.

fiscal unit.

ment", Council elections. Within each department there is a

varying number of Communes large and small. The Commune is a corporate body and, therefore, enjoys significant political power. They are a very old institution and some of them anti-date the Revolution of 1789. Each Commune has a locally elected Municipal Councl whose area is largely determined by communal population. The Commune Council has power to make laws relating to local matters. The executive powers are conferred upon a Mayor and assistants chosen from and by the Council. Once chosen, the Mayor becomes substantially independent of the Council, which cannot dismiss him and cannot directly control him in the work of administration. The Mayor also is an agent of the national authority in Paris and has to carry out national policy in the Commune. He is responsible to the Prefect of the Department, the Minister of the Interior and even to the French President. In matters relating to finance, police and public health, he has [illegible]

of the Interior. Even the decisions of the Council of the Commune are subject to modification by the Prefect of the Department. Thus, centralization is the most striking feature of the French [illegible]

authorities are subject to the supreme control of the Centre. Local government in most European countries (Switzerland is a remarkable exception), resembles the French system.

In Switzerland there are three thousand Communes and 25 Cantons. Every citizen has three citizenship, Swiss, Cantonal, and Communal, and this last is not the least important. The Swiss Commune is the home of pure democracy and all the residents stand together and help each other. They look after the Common [illegible]

which the Communes are governed. Sometimes there is open voting. Discussion is free and frank. "Democracy here is less of an outward show and more of a mental activity. It is above all, direct, direct as it could never be in the confederation, and as it can only be in the Lendegemeinde-Cantons". In bigger towns secret ballot is observed. By common consent the Swiss Communes are more democratic than the English Parishes. The autonomy of the Communes is taken for granted and they are subject to no control

on the part of the cantons in the exercise of their own discretionary powers. In case the autonomy of the Communes is violated, it can take an appeal to the Federal Supreme Court where it will receive the same attention as the liberties of individuals. In five Lendegeminde-Cantons, there is purest and most direct democracy. Here every Sunday all enfranchised men assemble and elect their governors and make their laws. The landammann conduct proceedings in loud voice and the citizens proclaim their will by a show of hands.

LOCAL GOVERNMENT IN THE U.S.S.R.

In the U.S.S.R. the local arms of state power are a component part of the Soviet State apparatus. Just as there is no place for separation of powers in the Soviet system, there cannot be any contradiction between local and central state organs in the Soviet state. There is the running unity supplied by communist ideology. Local organs of state power function in Territories, Regions, Autonomous Regions, National Areas, Districts, Cities and rural localities. The total number of local organs of state power is more than 60,000. Everywhere there are local Soviets of working People's Deputies and they are the virtual schools of state administration. In addition to these Soviets there are Street and Block Commissions of citizens, and Parents Commissions in the Schools. The Commissions assisting the system of State Credits and Savings Banks and the Commissions, furthering the development of trade and public catering. Commissions formed at house management offices are widespread and in 1955 about 2500 commissions of this kind were set up in Moscow. The structure and working of the local state organisation is closely bound up with the multi-national character of the Soviet state, and the representatives of all nationalities participate in the work *of the local organs of state power. The doctrine of democratic* centralism applies to all the local government units in the U.S.S.R All local organs of state power are elected by the people and the lower ones are accountable to the higher ones. There is the allround development of local initiative within the framework of the tasks confronting the body concerned. The directives of the higher organs are binding on the lower organs. The principle of dual subordination in the system of the executive bodies of the local Soviets is extensively applied and this ensures harmonious combination of local interests with those of the state as a whole. In short, the local government units in the Soviet Union help the

and higher level. The local Soviets also maintain executive and administrative organs—the Chairman, Vice-Chairman and Sec-

retaries of the Soviet. These Executive Committees function on the principle of dual subordination: they are accountable both to *the Soviet which elects them and to the executive and administrative* organs of the superior Soviet of the working People's Deputies. Under these executive committees the local Soviets of *Working People's Deputies set up Departments and Administrations.* Thus, party control and centralization are the two principal characteristics of the local self-government in the U.S.S.R.

13

CONCLUSIONS

It is now twelve years that in India we have been working a Constitution, the largest written Constitution in History. During this short period we have amended it 16 times. Parts of the Constitution have been modified by customs and conventions; some parts have been interpreted by law Courts. There exists considerable literature on the study of the Constitution. In this work we have attempted to analyse different aspects of the Constitution in a comparative setting with a view to evaluating the dangers ahead. In an environment characterized by mass illiteracy (if not mass ignorance), want of popular enthusiasm and lack of social consensus, a constitution based on a faithful pursuit of the West and repeating orthodox formulas may not be an adequate instrument for achieving real independence. At one time the constitution was viewed more as a symbol of our freedom; lately it is being realised that it must function as a human agency for bringing about social and economic salvation. It was framed not on the basis of the existing facts of our life. It sought to incorporate the democratic philosophy of Britain and the United States and the hard realism enshrined in the Government of India Act, 1935, with a mild dose of socialism. Its working can be evaluated only when we draw the necessary comparisons with these systems which it sought to emulate. This is the justification for this work, if one must be found.

The main constitutional trends in the post-war period have been ably analysed in the volume 'Constitutions And Constitutional Trends Since World War II' edited by Prof. Arnold J. Zurcher. Two World Wars, the Great Depression of the thirties, the unpleasant facts of the cold war, the drive of industrialism, the fear and uncertainty generated by the thermo-nuclear revolution of our age, have inevitably led to the concentration of power in the State. With [illegible] State machinery, power has gravitated away from the Legislature towards the Executive. There has been a phenomenal growth of delegated legislation and a large number of administrative tribunals have been cropping up. Pressure Groups and Interest organisations have been multiplying. Even in the

United States where Separation of Powers and the extra-ordinary powers of the Congress had contributed to the doctrine of limited government, the powers of the Executive have been consistently increasing. New dimensions have been added to the Presidency in foreign affairs as well as in the sphere of domestic policies. Witness, for example, Kennedy's recent roll back of steel prices after they had been announced by the steel companies, or the use of federal troops in getting Mr. Meredith into the University of Mississippi, apart from the Executive action in Cuba which might have touched off a thermo-nuclear war. The Executive can get over legislative inaction and delay in countless ways; the people look to it for leadership and prompt action; science and technology have made the Executive as representative as adult suffrage made the legislature popular. The Executive can also get round the judicial decisions by amending the Constitution, by changing the laws, by changing the social climate, by means of mass media, or when chance permits it by changing the personnel of the Courts.

Thus, today the political debate is no longer between the [illegible]

however, be so organized and it must so function that it may serve as the supreme advisory body to advise the Executive. The real problem of modern democratic government is quick and efficient action, so that the managerial responsibilities of state enterprise which is inevitable, may be efficiently discharged. We must ensure, on the one hand, the administrative and budgetary auto- [illegible]

dispense with proportional or functional representation. They must, therefore, be encouraged but their activities must be adjusted and regulated by the State.

The state must also regulate political parties. Authoritarian parties and Democracy are incompatibles. One must go under, sooner or later. If democracy is to be saved, parties which resort to force and violence and act anti-democratically must be given no quarter. While human rights must be reaffirmed, we must also see to it that these rights are not made available to those who do not believe in tolerance and constitutionalism. Those who believe in private violence must be eliminated from public life. Courts of justice are meant only for those who believe in equity. Parties which act violently must, therefore, be outlawed. This is the lesson of our age. This is necessary in states which lack social

and moral consensus and where there is no underlying agreement among social groups about the scope and purpose of government and the relation of government to society. If in a Constitution we can provide for adult suffrage, freedom of speech, ministerial responsibility and several other democratic tenets, it is amazing that we should leave out the most important principle—Democratic Parties. Without this element being defined by the fundamental law a Constitution will be merely a digest of anarchy. The growing power of the state has modified the doctrine of fundamental rights also. Just as the individual has rights, so he has duties; just as the state has duties, so it has rights. The individual right to property, for example, has to be adjusted with the State right to tax and expropriate property in public interest. A welfare state means collective welfare—in the making of which all must contribute in proportion to the benefits they derive from the common membership of society. The rich must contribute their riches, the poor their poverty. A theory of rights which gives disguised sanction to loot and plunder and provides juridical cover to man's acquisitive instinct is entirely incompatible with the theory of modern government. The central problem in politics has always been the relationship between people and government. The people have been afraid of government, for government means power. They have a right to be afraid. That is why they limited the government. But the greatest power today is the power of finance—the power of monopolies against which the people have to be defended. Money barons control the Press, and the Press is virtually Public Opinion.

A theory of limited government today, therefore, means that this power must be put under restraint—better still, that in this power the people must have a share. Power is a heady thing, a dangerous thing—political power as well as economic power. The individual right to property must, therefore, be subordinated to the state right to property; and the realization of this principle will lead to a Socialist, Welfare State based on canons of social justice.

Without social justice, legal justice is a mere sham. The best leveller and the strongest cementing force in a society is the feeling that each individual is as good as another in the realm of opportunity. Subject to this, the freedom of speech and the press and conscience cannot be restricted without accepting a measure of fascism. Subject to a restriction on violence and terror, subject to the rule that some shall be permitted to break up a peaceable meeting assembled to hear some one, speech and the press must be free. If you assert that they are at least half free, you may rest assured that very soon they will cease to be even half free. Justice Holme's Golden Rule for freedom of thought was "not free thought for those who agree with us but freedom for the thought that we hate." Freedom of thought thus really requires a great deal of discipline; for discipline means putting up with something we do not like. The restrictions to which we referred above are not really placed on the freedom of speech, for the government can

step in to regulate the people only when they *do* something and not when they *say* something. Countless crimes have been committed in the name of seditious libel which is nothing really but the persecution of people who are on the wrong side politically. Let no one be afraid of free speech, no one is afraid of it except dictators who want to stay in power, and for whom too much talk is dangerous. It is they who need to be able to stop people from talking; to preserve themselves they stifle thought, imprison the human mind and intellect and break up the meetings of those whose ideas they hate. This they usually do in the name of national security. The royal road to security, however, is freedom. As government was created to serve the people, a constitution is framed to limit the power of government and of those selected by the people to exercise it at the moment. No Government will be able to justify curtailment of freedom except when "the danger to society is clear and present." The alternative is to punish anyone you choose to, on the plea of a *distant danger at some indefinite time*.

It is on this ground that an independent judiciary, and all that it implies, is said to be the *sine qua non* of a democratic society. Its value in a backward plural society like ours is still greater, for an impartial judicial system can go a long way in achieving national integration and moral consensus to which we referred earlier. Equally important for planned development is democratic decentralization and an enlightened, broad-based, and well-informed and responsive public administration. This calls for not merely literacy but a balanced system of education. It is not enough that people must be educated and have understanding; they must have an understanding of human nature. Thus equipped they will be able to meet the challenge which science, technology and industrialism have thrown. It is challenge as well as an opportunity. Finally, patriotism is not a blind love of one's country. When a man is asked to lay down his life for the sake of the country and for preserving the national heritage, he must discern clearly what he is fighting for. Who but the degenerate will fight for fascist tyranny which thrives on informers, which censors every word that is uttered or written, which determines what gods shall be worshipped (or any at all) and which seeks to place all the guns it has at the disposal of tycoons. If untouchability or witch-hunting is part of one's national heritage, one must have the right to pick and choose. Man fights and dies for ideals and the highest ideals for us in India, as symbolized in the life of Jawahar Lal Nehru, are Democracy, Socialism Secularism, and the Scientific spirit. There are the best elements in India's past inheritance and present aspirations. For them we live and these we shall preserve. A government striving to realize these ideals has our whole-hearted support. What Justice Black of the United States Supreme Court said about his country we say about ours: "Of course, I want this country to do what will preserve it. I want it to be preserved as the kind of government it was intended to be. I would not desire to live at any place where my thoughts

were under the suspicion of government and where my words could be censored by the government, and, where worship, whatever it was or wasn't, had to be determined by an officer of the government. That is not the kind of government I want preserved."

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